

	<p align="center">State of South Carolina</p> <p align="center">Request for Proposal</p>	Solicitation: Date Issued: Procurement Officer: Phone: E-Mail Address:	5400016872 12/7/2018 David H. Quiat, CPPB 803.737.0562 dquiata@mms.sc.gov
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DESCRIPTION: Provide a Statewide Voting System Solution for the South Carolina State Election Commission.

USING GOVERNMENTAL UNIT: South Carolina State Election Commission

SUBMIT OFFER BY (Opening Date/Time): 3/4/2019 11:00 AM

The Term "Offer" Means Your "Proposal". Your offer must be submitted in a sealed package. The Solicitation Number & Opening Date should appear on package exterior. See the clause entitled "Submitting Your Paper Offer or Modification."

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS: SFAA, Div. of Procurement Services, MMO PO Box 101103 Columbia SC 29211	PHYSICAL ADDRESS: SFAA, Div. of Procurement Services, MMO 1201 Main Street, Suite 600 Columbia SC 29201
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AWARD & AMENDMENTS	Award will be posted on 5/1/2019 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov
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You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of one hundred and twenty (120) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

NAME OF OFFEROR <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
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AUTHORIZED SIGNATURE <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	DATE SIGNED
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TITLE <small>(business title of person signing above)</small>	STATE VENDOR NO. <small>(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)</small>
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PRINTED NAME <small>(printed name of person signing above)</small>	STATE OF INCORPORATION <small>(If you are a corporation, identify the state of incorporation.)</small>
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OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)
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COVER PAGE - PAPER ONLY (MAR. 2015)

PAGE TWO**(Return Page Two with Your Offer)**

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	_____ Area Code - Number - Extension Facsimile
	_____ E-mail Address

PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause)	ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
_____ Payment Address same as Home Office Address _____ Payment Address same as Notice Address (check only one)	_____ Order Address same as Home Office Address _____ Order Address same as Notice Address (check only one)

ACKNOWLEDGMENT OF AMENDMENTS							
Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
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PAGE TWO (SEP 2009)

End of PAGE TWO

****IMPORTANT INFORMATION FOR ALL OFFERORS** (REVIEW THIS PAGE)**

All Offerors desiring to respond to this solicitation should register and submit your response online. To respond online, you must follow the new South Carolina Enterprise Information System (SCEIS) vendor registration instructions found at the South Carolina Procurement Information Center website address of: <http://www.procurement.sc.gov/>. Even if you are registered in the old procurement system, you must still register or update your information in the new SCEIS system. Once the registration process is complete, the system will generate a new SCEIS vendor userid and password. The Offeror must keep this information current or you will not be able to submit future bids.

OFFERORS ENCOUNTERING REGISTRATION PROBLEMS SHOULD CONTACT:

DSIT Help Desk (803) 896-0001 Select Option 1 then Option 1
Monday – Friday 8:00 AM – 4:30 PM

SCEIS Service Desk Vendor Ticket Form

<http://sceis.sc.gov/vendorrequests/>

Additional vendor instructions concerning submitting offers can be found at:

<http://procurement.sc.gov/PS/vendor/PS-vendor-submitting-offers.phtm>

NUMBER OF COPIES

Offerors will need to follow these instructions carefully when responding to the solicitation.

1. The original solicitation response should be submitted on-line and is the official response.
2. Offerors should attach all requested documents to their response in the online system. These documents can be attached under the “My Notes” tab in the online system either on the main response page or under the necessary line item. **If submitting multiple attachments label them clearly.**

Offerors should submit the following copies of their response to the address on the Cover Page (**all items must be labeled as specified below as well as include company name and solicitation number**):

- a. One (1) original paper copy marked “original” and seven (7) identical paper copies of the Offeror’s Technical Proposal.
- b. One (1) original paper copy marked “original” and three (3) identical paper copies of the Offeror’s Business Proposal.
- c. One (1) labeled electronic copy (USB flash drive) of the Offeror’s Technical Proposal.
- d. One (1) labeled electronic copy (USB flash drive) of the Offeror’s Business Proposal.
- e. One (1) USB flash drive labeled “original redacted” containing a redacted version of your original Technical and Business Proposals. Note: Except for the information removed or concealed, the redacted version must be identical to your original offer. The redacted version must reflect the same pagination as the original and show the empty space (or blacked out sections) from which information was redacted.

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REQUEST FOR PROPOSAL (RFP)
SOLICITATION NUMBER 5400016872

**VOTING SYSTEM SOLUTION
SOUTH CAROLINA STATE ELECTION COMMISSION**

SCHEDULE OF KEY DATES IN THE PROPOSAL PROCESS
All dates subject to change

1. Distribution of the Request for Proposal	12/7/2018
2. Pre-Proposal Conference	12/19/2018
3. Deadline for Submission of Questions (1:00 p.m.)	1/7/2019
4. State's Written Responses to Questions submitted	1/11/2019
5. Submission and Opening of Proposals	3/4/2019
6. Offerors Notified/Oral Presentation Date/Time Assigned	3/29/2019
7. Oral Presentations	Week of 4/15/2019
8. Intent to Award Posting Date	5/1/2019
9. Intent to Award Becomes Official	5/14/2019
10. Contract Performance	7/1/2019

PART 1**INSTRUCTIONS TO OFFERORS-A. GENERAL INSTRUCTIONS**

1.1 DEFINITIONS, CAPITALIZATION, AND HEADINGS: Clause headings used in this solicitation are for convenience only and shall not be used to construe meaning or intent. Even if not capitalized, the following definitions are applicable to all parts of the solicitation, unless expressly provided otherwise.

Amendment means a document issued to supplement the original solicitation document.

Authority means the State Fiscal Accountability Authority or its successor in interest.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]

Change Order means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)]

Contract See the clause entitled “Contract Documents & Order of Precedence.”

Contract Modification means a written order signed by the Procurement Officer directing the Contractor to make changes which the clause of the contract titled “Changes,” authorizes the Procurement Officer to order without the consent of the Contractor. [11-35-310(9)]

Contractor means the Offeror receiving an award as a result of this solicitation.

Cover Page means the top page of the original solicitation on which the solicitation is identified by number.

Offerors are cautioned that Amendments may modify information provided on the Cover Page.

Offer means the proposal submitted in response to this solicitation. The term Proposal is used interchangeably with the term Offer.

Offeror means the single legal entity submitting the offer. See the clause entitled “Signing Your Offer.”

Page Two means the second page of the original solicitation, which is labeled Page Two.

Procurement Officer means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.

Solicitation means this document, including all its parts, attachments, and any Amendments.

State means the Using Governmental Unit identified on the Cover Page.

Subcontractor means any person you contract with to perform or provide any part of the work.

Using Governmental Unit means the unit of government identified as such on the Cover Page.

Work means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract.

You and Your means Offeror.

1.2 AMENDMENTS TO SOLICITATION: (a) The solicitation may be amended at any time prior to opening. All amendments to this solicitation shall be in writing from the State. The State shall not be legally bound by any amendment which is not in writing. All actual and prospective Offerors should monitor the following web site for the issuance of amendments: www.procurement.sc.gov (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by acknowledging receipt in the Offeror’s Executive Summary, (4) by letter, or (5) by submitting a proposal that indicates in some way that the Offeror received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified by the amendment(s) remain unchanged.

1.3 AUTHORIZED AGENT (FEB 2015): All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract.

1.4 AWARD NOTIFICATION: Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Notice will be sent to all Offerors responding to the Solicitation.

1.5 PROPOSAL AS OFFER TO CONTRACT: By submitting Your proposal, You are offering to enter into a contract with the Using Governmental Unit. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An offer may be submitted by only one legal entity; "joint bids" are not allowed.

1.6 PROPOSAL ACCEPTANCE PERIOD: In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. Otherwise, Your Offer remains valid until final award including through any periods consumed by protests.

1.7 BID IN ENGLISH & DOLLARS: Offers submitted in response to this solicitation shall be in the English language and in US dollars.

1.8 AUTHORITY AS PROCUREMENT AGENT (DEC 2015): The Procurement Officer is an employee of the Authority acting on behalf of the Using Governmental Unit pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Unit. The Authority is not a party to such contracts, unless and to the extent that the Authority is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract.

1.9 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008): Giving false, misleading, or incomplete information on this certification may render you subject to prosecution under Section 16-9-10 of the South Carolina Code of Laws and other applicable laws.

(a) By submitting an Offer, the Offeror certifies that-

(1) The prices in this Offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to-

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this Offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the Offer is considered to be a certification by the signatory that the signatory-

(1) Is the person in the Offeror's organization responsible for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the Offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the Offeror's organization responsible for determining the prices offered in this proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the Offeror deletes or modifies paragraph (a)(2) of this certification, the Offeror must furnish with its Offer a signed statement setting forth in detail the circumstances of the disclosure.

1.10 CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:

(a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this Offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this Offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer, or his designee, if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer, or his designee, may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer, or his designee, may terminate the contract resulting from this solicitation for default.

1.11 CODE OF LAWS AVAILABLE (JAN 2006): The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at: <http://www.scstatehouse.gov/code/statmast.php> The South Carolina Regulations are available at: <http://www.scstatehouse.gov/coderegs/statmast.php>

1.12 DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015): You warrant and represent that your Offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the State may withhold award. Before withholding award on these grounds, an Offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your Offer identifies any services that relate to either this solicitation or the work that has already been performed by you, a proposed subcontractor, or an affiliated business of either.

1.13 DEADLINE FOR SUBMISSION OF OFFER (JAN 2004): Any offer received after the Procurement Officer or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening. [R. 19-445.2070(G)]

1.14 DRUG FREE WORK PLACE CERTIFICATION (JAN 2004): By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

1.15 DUTY TO INSPECT AND INQUIRE: Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation and will be implemented on time and performed satisfactorily over the entire term of the contract. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation in accordance with clause 1.22 below. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation, or assumption it makes concerning the Solicitation, which Offeror does not bring to the State's attention pursuant to clause 1.22 below. By submission of a proposal, Offeror also certifies that its Offer has been reviewed by the appropriate individuals within the Offeror's organization and that the goods and services herein, if an award is made to that Offeror, can and will be provided on time and for the compensation proposed, subject to any negotiations that may affect the amount of compensation.

1.16 ETHICS CERTIFICATE (MAY 2008): By submitting an offer, the Offeror certifies that the Offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment of a former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by Contractor to candidate who participated in awarding of contract. The State may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If Contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, Contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Procurement Officer at the same time the law requires the statement to be filed.

1.17 OMIT TAXES FROM PRICE (JAN 2004): Do not include any sales or use taxes in your price that the State may be required to pay.

1.18 OPEN TRADE REPRESENTATION (JUN 2015): By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

1.19 PROTESTS: Any prospective Offeror, Contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest (and it must be actually received) within fifteen days of the date of issuance of the applicable solicitation document at issue pursuant to S.C. Code Section 11-35-4210. Any actual Offeror, Contractor, or subcontractor who is aggrieved in connection with the intent to award of a contract shall protest (and it must be actually received) within ten days of the date notification of the intent to award is posted also in accordance with S.C. Code Section 11-35-4210. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See the clause entitled "Protest – CPO" (clause 1.38 below).

1.20 PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015): Violation of these restrictions may result in disqualification of your Offer, suspension or debarment, and may constitute a violation of law. (a) During the period between publication of the solicitation and final award, you must not communicate, directly or indirectly, with the South Carolina State Election Commission or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer. [R. 19-445.2010] (b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. You represent that your Offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the South Carolina State Election Commission during the period beginning eighteen months prior to the Opening Date. [R. 19-445.2165]

1.21 PUBLIC OPENING (JAN 2004): Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable.

1.22 QUESTIONS FROM OFFERORS: (a) Any prospective Offeror desiring an explanation or interpretation of the solicitation, specifications, etc. (see clause 1.15 above "Duty to Inspect and Inquire"), must request it in writing. Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. We will not identify you in our response to your question. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer as soon as possible regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. Offerors should advise the Procurement Officer of any problems they perceive as a result of reviewing this solicitation document, which may bear upon their ability to comply, or submit any other questions, which might ultimately bear upon the State's ability to enter into the relationship described herein with a selected vendor.

1.23 REJECTION/CANCELLATION (JAN 2004): The State may cancel this Solicitation in whole or in part and may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065]

1.24 RESPONSIVENESS/IMPROPER OFFERS:

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer. Each separate Offer must satisfy all Solicitation requirements. Multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer.

(c) Responsiveness. Any proposal deemed unacceptable pursuant to S.C. Regulation 19-445.2095 (I)(1)(c) and (J) will be rejected, such determinations to be discretionary and not disturbed unless arbitrary and capricious. The South Carolina State Election Commission may elect to conduct discussions, including the possibility of proposal revisions, but only for those proposals determined to be either acceptable or potentially acceptable pursuant to S.C. Regulation 19-445.2095 (I)(1)(a) and (b). Any such discussions shall be conducted in accordance with S.C. Regulation 19-445.2095 (I)(2), (3), and (4).

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid.

1.25 SIGNING YOUR OFFER (JAN 2004): Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words “by its Partner,” and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the joint venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent’s authorization to bind the principal.

1.26 STATE OFFICE CLOSINGS (JAN 2004): If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule the proposal opening. If state offices are closed at the time a pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://www.scemd.org/planandprepare/disasters/severe-winter-weather>

1.27 SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015): (An overview is available at www.procurement.sc.gov) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these instructions, as being either "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". (All references to S.C. Code of Laws.)

1.28 SUBMITTING A PAPER OFFER OR MODIFICATION: Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." For a paper offer or modification the following instructions apply. (a) All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the proposal. Do not modify the solicitation document itself. (b) (1) All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package. (2) Submit your offer or modification to the address on the Cover Page. (3) The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the Offeror. If the offer or modification is sent by mail or special delivery service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof. (c) If you are responding to more than one solicitation, submit each offer in a separate envelope or package. (d) Submit the number of copies indicated on page 3. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation.

1.29 TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008): Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and

regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the Contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498.

1.30 VENDOR REGISTRATION MANDATORY (JAN 2006): You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>.)

1.31 WITHDRAWAL OR CORRECTION OF OFFER: Offers may be withdrawn by written notice received at any time before the exact time set for opening. A proposal may be withdrawn in person by an Offeror or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

PART 1

INSTRUCTIONS TO OFFERORS-B. SPECIAL INSTRUCTIONS

1.32 PRE-PROPOSAL CONFERENCE/SUBMISSION OF QUESTIONS:

There will be a Pre-Proposal Conference at **10:00 AM Local Time on December 19, 2018** at the South Carolina State Election Commission Training Room, 1122 Lady Street, Suite 500, Columbia, South Carolina.

NOTE: Due to the importance of all Offerors having a clear understanding of the specifications and requirements of this RFP, attendance at the pre-proposal conference is strongly encouraged. The South Carolina State Election Commission strongly recommends that, at a minimum, the individual responsible for preparing and submitting the Offeror's proposal be in attendance. Please bring a copy of the RFP with you.

The purpose of the Pre-Proposal Conference is to identify items that are in error, unclear, or unduly restrictive. Offeror's will be given the opportunity to provide input, comments, questions, and suggested changes relative to this solicitation.

All conference attendees should read the solicitation and develop their questions in preparation for the conference. The pace of the conference will NOT afford individuals enough time to complete an initial review of the document during the conference.

SUBMISSION OF QUESTIONS: Any questions, comments, requests for information or clarifications regarding the RFP must be submitted in writing **no later than January 7, 2019, at 1:00 P.M. (EST)**. Do NOT wait to assert deviations, exceptions, etc. to anything in this RFP until (or in) the submission of your proposal.

Anything that any Offeror would like to modify, seek clarifications on, or any other deviation, however modest, MUST be presented during the question and answer phase, considered and determined by the State before the submission date for all proposals, so that all prospective Offerors will have a common and uniform basis upon which to submit its proposals. Any written questions, requests for information or request for clarifications received will be responded to in the form of a written amendment to the RFP and e-mailed to all prospective Offerors. The amendment will also be posted at the following web address: www.procurement.sc.gov

All questions, comments, requests for information or clarifications should, to the highest degree possible, cite the specific RFP section and paragraph number(s) to which the question refers. All questions, comments, requests for information or clarifications regarding this RFP should include the identity of the sender, firm name, mailing address, telephone number, and e-mail address. Email is the preferred method for submitting questions to the Procurement Officer with "Questions: Voting System Solution RFP" as the subject of the email. E-Mail Address: dquiat@mmo.sc.gov Submit questions in an easily copied format such as MS Word. Please do not insert your questions into tables.

1.33 CONTENTS OF OFFER (FEB 2015): (a) Offers should be complete and carefully worded and should convey all of the information requested. (b) Offers should be prepared simply and economically, providing a straightforward, concise description of Offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. (c) If your offer includes any comment over and above the specific information requested in the solicitation, you should include this information as a separate appendix to your Offer. Offers which include either modifications to any of the solicitation's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

1.34 REQUIRED MEDIA AND FORMAT: In addition to your original offer, you must submit the number of copies in the format as indicated on page 3. The Procurement Officer must be able to view, search, copy and print electronic documents without a password.

1.35 LEASE FORM-QUESTIONS (JAN 2006): Use of the attached standard equipment agreement (form 80-SC-EL-1, revised 7/1/88) is required by Regulation 19-445.2152. No other lease form shall be used. Offerors may propose modifications to this agreement prior to the deadline for submitting questions (see 1.32 above). Any modifications accepted will be noted in an amendment.

1.36 MAIL PICKUP (JAN 2006): The State Procurement Office picks up all mail from The US Postal Service once daily around 8:30 a.m. (excluding weekends and holidays). (See Clause 1.13 above).

1.37 ON-LINE REGISTRATION INSTRUCTIONS: Mandatory Registration. You must register before you can submit an offer on line! (See Clause 1.30 above).

1.38 ON-SITE PRESENTATIONS/PRESENTATION SCRIPT: The State may entertain on-site presentations from the highest ranked responsive/responsible offerors after points from proposal evaluations are tallied that have a mathematical possibility of being the highest ranked offeror after addition of points from the on-site presentations and business proposal. The on-site presentations will be held at the South Carolina State Election Commission (SEC) facilities.

- a. Offerors will be limited to a presentation of their proposed VSS as described in the Offeror's written proposal. Evaluators may ask questions pertaining to the Offeror's presentation. The Offeror's answers are restricted to statements of facts. Offeror will not be allowed or permitted to introduce new information or show products/features not included in their proposal. Negotiation is not permitted at this stage in the procurement process and Offerors may not change their proposals.

- b. The presentation should be conducted in a straightforward manner in order to secure a clear and meaningful understanding of the Offeror's proposed VSS.
- c. The presentation is designed to satisfy the evaluation panel's need for understanding of the information that was provided in the Offeror's written proposal. Therefore, the Offeror may neither ask questions, divulge any cost information, nor receive preliminary assessments on its proposal from the members of the panel.
- d. A presentation script will be provided to the Offeror one (1) week prior to the scheduled presentation. Following the provided script will assist the evaluation panel in reviewing your response and to gauge how well your solution meets the State's needs. Please prepare to present information and/or perform presentations on all items listed in the provided script. The time allotted for the presentation shall not exceed three (3) hours, consisting of a fifteen (15) minute introduction period, two and a half (2.5) hours for the presentation, and a fifteen (15) minute period for closing remarks, all of which may include questions from the panel. Additionally, if time allows, at the end of the scripted portion of the presentation, Offerors will have the opportunity to show any additional features or functionality offerings that were not previously covered by the script; but were a part of their proposal response.
- e. In an effort to ensure that we cover all key factors necessary to complete our selection process, we ask that you complete the entire script before presenting other optional features. If there is a portion of the script which your software does not accommodate, please state this during your presentation and move on to the next agenda item. Failure to review or acknowledge items on the script could affect the score received.
- f. Offerors will present their presentation in REAL TIME. Offerors will be required to supply all components required in order to perform the presentation. The SEC will provide internet connectivity, a projection screen, tables, chairs and any other requested accommodations the SEC finds reasonable.

Attendees at the presentation session should include key members of the Offeror's proposed account management team, key technical personnel, and key subject matter experts.

1.39 OPENING PROPOSALS – INFORMATION NOT DIVULGED (FEB 2015): Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. In competitive sealed proposals, neither the number, identity of Offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)]

1.40 PROTEST - CPO - ITMO ADDRESS (JUN 2006): Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing (a) by email to: protest-itmo@itmo.sc.gov, or (b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

1.41 RELEASE OF CLAIMS: With the submission of a proposal, each Offeror agrees that it will not bring any claim or have any cause of action against the State based on any misunderstanding, failure by the State to properly convey the information, or failure by the State to provide the Offeror with pertinent information as intended by the RFP. Additionally, the Offeror, its officers, agents, or representatives waive and release the State and each and any entity, person, or other source providing any information concerning the Offeror, of any and all claims of any sort or variety whether in tort, contract or otherwise, whether known or unknown, regarding the Offeror's or subcontractor's past performance, products, services, personnel, reputation or its Subcontractors or any other information sought or obtained by the State, whether or not the information is relied on by the State. The Offeror agrees that it will assert no claims for proposal preparation costs arising from a protest, action or claim arising from the solicitation or award.

1.42 DISCUSSIONS AND NEGOTIATIONS (FEB 2015): Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award [11-35-1530(6); R.19-

445.2095(I)]. If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked Offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal.

PART 2

SCOPE OF PROPOSAL

It is the intent of the South Carolina State Fiscal Accountability Authority (SFAA), Division of Procurement Services, Office of State Procurement, to solicit proposals to provide a Statewide Voting System Solution (VSS), including all associated software, hardware, equipment, supplies, support and services, for the South Carolina State Election Commission (SEC). Offerors may propose both ballot marking devices and/or hand-marked optical scan systems. If submitting more than one offer each separate offer (ballot marking devices and hand-marked optical scan) must satisfy all solicitation requirements. Multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer. Offeror's proposed voting system solution shall include a paper record of each voter's selections. The SEC desires to purchase the VSS but, dependent on available funding, may consider lease options.

2.1 INTRODUCTION

The Contractor will provide all forty-six (46) counties of South Carolina all software, hardware, equipment, supplies, support and services necessary for a complete and comprehensive statewide VSS. The VSS must accommodate and work with the State's voter registration system, electronic poll book, and Election Night Reporting (ENR) system.

South Carolina requires two types of certifications. First, the VSS must be certified by a testing laboratory accredited by the Federal Election Assistance Commission (EAC) as meeting or exceeding the minimum requirements of federal voting system standards as required by S.C. Code of Laws Sections 7-13-1330 and 7-13-1620 prior to the proposal due date on March 4, 2019. Second, the VSS must obtain state certification as required by S.C. Code of Laws Sections 7-13-1320, 7-13-1330, 7-13-1340, 7-13-1620, 7-13-1640 and 7-13-1655, as well as any other applicable sections in Title 7 of the S.C. Code, no later than April 12, 2019.

Background

The State of South Carolina currently uses a statewide electronic voting system for in-person voting and optical scan ballots are used for absentee by mail voting in all counties. The system was implemented in 2004-2005 in all forty-six (46) counties.

The SEC is responsible for supporting the statewide voting system by producing election definitions in a secure environment. Data is exchanged between the SEC and counties using a Secure File Transfer Protocol (SFTP) site. The statewide Voter Registration and Elections Management System (VREMS) generates precinct, district, and candidate information to be used in the election definition. The election results are uploaded to the online Election Night Reporting system (ENR) using files produced by the voting system software.

The voting system includes approximately thirteen thousand (13,000) touch screen voting machines, more than two thousand (2,000) touch screen voting machines with audio ballot capabilities for the voters who are blind or visually impaired, optical ballot scanners, ballot on demand printers, and other peripheral equipment.

Several counties outsource the absentee ballot mailing process for larger elections. The SEC also provides counties with a customized electronic poll book developed by the SEC.

Currently, within the forty-six 46 counties in SC there are approximately:

- 3.1 million active voters (see Appendix B)
- 2,375 precincts (see Appendix B)
- 20,000 poll managers required for a statewide election
- 13,000 voting machines
- 100 ballot scanners
- >500k absentee voters for a Presidential General Election (see Appendix C and C-1)
- 50 ballot on demand printers

PART 3

SCOPE OF WORK

The Contractor shall provide a turnkey solution to the SEC and the forty-six (46) counties of South Carolina. The Contractor's solution shall include all necessary software, hardware, equipment, supplies, support and services necessary for a complete and comprehensive solution that meets South Carolina's requirements for a statewide voting system and is most advantageous to the State.

The Contractor's VSS shall support the election processes at the county boards of registration and elections as well as the SEC, and include all functions for defining elections, producing ballots, voting at all precincts, tabulation, and reporting of results at the precinct, county, and state levels. The Contractor's VSS shall include a paper record of each voter's selections.

The Contractor shall provide all software, hardware, firmware and services necessary to implement the statewide voting system. The Contractor will also provide project management services, hardware and software installation, training, documentation, onsite and remote technical support, hardware maintenance and repair, and voting system operation and support.

The VSS must interface with the SEC's current election night reporting system (ENR) or a comparable system supplied by the Contractor. The SEC's current ENR system vendor is SCYTL. The VSS must also interface with the SEC's voter registration system. The current voter registration system is the Voter Registration and Elections Management System (VREMS).

The amount of precinct-level equipment including, but not limited to, voting booths and scanners must adhere to state law plus include an additional five percent (5%) per county to allow for future growth. The Contractor must also provide the SEC with all equipment proposed for county and precinct use in a quantity sufficient for the state to produce and test ballots for each county.

3.1 Support for the 2020 Elections

3.1.1 The planning and implementation of the statewide voting system shall begin July 1, 2019. The Contractor will provide all technical and support services for the conduct of every election in the State beginning on January 1, 2020 and continuing through the 2020 General Election. This includes full onsite support for the Presidential Preference Primaries, June Statewide Primaries and runoffs, and the November General Election. Following the November 2020 General Election, the Contractor will provide ongoing support offsite.

3.2 Project Management and Administrative Support

3.2.1 The implementation of a VSS is a complex and critical project. The agency will assign a project manager to serve as the primary point of contact.

3.2.2 The Contractor shall assign a project manager to oversee and coordinate VSS delivery, implementation, training and support. The Contractor's assigned project manager shall provide professional project management services to ensure the successful delivery and deployment of the VSS. The project manager will be required to submit updates at least weekly to the SEC project manager regarding VSS delivery, implementation, training and support, technical difficulties, and all other related matters.

3.3 VSS Minimum Requirements

3.3.1 The VSS shall include the following products, services, and functionalities including, but not limited to:

- a) Define elections and format ballots;
- b) Produce ballots on demand;
- c) Tabulate ballots at precincts;
- d) Report results; and,
- e) Perform post-election audits.

3.3.2 The VSS shall include all hardware and peripheral equipment and supplies necessary to have a functioning system. All proposed hardware must be newly manufactured, not refurbished.

3.4 Payment Schedule

3.4.1 The amount of ten percent (10%) will be retained from each payment until the successful completion of all contractual obligations as determined by the SEC.

3.4.2 Contractual milestones will be used to execute payment and be based on a timeline provided by the Contractor and accepted by the SEC. Completion of the statewide voting system implementation is defined as:

- a) Acceptance of hardware and software at the SEC and in each county; and,
- b) Successful completion of the 2020 General Election.

3.5 Delivery/Performance Locations

3.5.1 Deliveries will be made to the SEC and each County Office of Voter Registration and Elections as directed by the SEC. A purchase order will be used to track inventory.

3.6 Operational Manuals

3.6.1 The Contractor shall provide all necessary operational manuals for their proposed VSS.

PART 4**MANDATORY MINIMUM QUALIFICATIONS**

The SEC believes that a Contractor does not have the capability of successfully and fully performing the contract unless it meets the mandatory minimum qualifications outlined below. Thus, in order to be qualified to receive an award, offerors must meet the following mandatory minimum qualifications:

- a. The Offeror must have been in the business of providing voting system solutions for a minimum of five (5) calendar years.

While the SEC believes that an Offeror who does not meet these minimum qualifications cannot successfully and fully perform the contract, Offerors are cautioned that the existence of these factors does not constitute a finding that an Offeror is responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

PART 5**INFORMATION FOR OFFERORS TO SUBMIT**

Offerors should submit the following information for purposes of evaluation. The SEC desires a detailed written submission so that it can make an accurate comparison of all proposals received. Please be specific in your answers. If submitting more than one offer each separate offer (ballot marking devices and hand-marked optical scan) must satisfy all solicitation requirements. Multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate business proposal for each offer. The Proposal should include the following sections and should be presented in the listed order:

5.1 TECHNICAL PROPOSAL**5.1.1 COVER PAGE**

Offerors must submit a signed copy of the cover page (page one and two) with their offer. By submitting a proposal, Offeror agrees to be bound by all of the terms of the RFP. Offerors agree to hold their offer open for a minimum of one hundred and twenty (120) calendar days after the Opening Date.

5.1.2 EXECUTIVE SUMMARY

An Executive Summary should be provided with the Offeror's Proposal. The Executive Summary should bear the name and address of the Offeror. The Executive Summary should include a brief description of the Offeror's understanding of the Scope of Work, their ability to provide the required services and should highlight the contents of their proposal.

Single Statement of Acceptance: Offerors should include a single statement of acceptance in their Executive Summary. The single statement of acceptance should declare that the Offeror fully understands, agrees to, and will comply with Part 1 Instructions to Offerors-A. General Instructions, Part 1 Instructions to Offerors-B. Special Instructions, Part 2 Scope of Proposal, Part 3 Scope of Work, Part 7 Terms and Conditions-A. General, and Part 7 Terms and Conditions-B. Special. Please note that the State may consider any proposal containing deviations, exceptions or caveats to the RFP that have not been submitted for consideration during the question and answer phase, and adopted by the State, as unacceptable.

Mandatory Minimum Qualification: Offerors should provide information to clearly establish that the Offeror meets the mandatory minimum qualifications outlined in Part 4, Mandatory Minimum Qualifications. Offerors should include this information in their Executive Summary. Any Offeror not meeting the mandatory minimum qualifications will not be considered for award, and therefore will not be evaluated.

Subcontracting: Offerors should identify any subcontractor(s) by name, define the relationship, the services to be performed by the subcontractor, and the years of experience. The Offeror's contract with the subcontractor(s) should require the subcontractor(s) to comply with all of the requirements contained in this RFP.

The Offeror may use subcontractor(s) to provide some portion of the work, subject to the following conditions:

1. The Offeror may subcontract up to and including, but not more than, twenty-five percent (25%) of this contract, excluding an electronic poll book subcontractor, as measured by the dollar value of the services performed by the Offeror and subcontractor(s).
2. The Offeror shall retain responsibility for all services provided by the subcontractor(s).
3. The subcontractor(s) shall be available to meet with SEC no less than annually, at SEC's discretion, to discuss the work of the subcontractor(s). The cost of the subcontracted service shall be made available to the SEC at the SEC's request.

5.1.3 TABLE OF CONTENTS

The Proposal should include a Table of Contents that lists page number references. The Table of Contents should be in sufficient detail to facilitate easy reference to the sections of the Proposal and separate attachments (which shall be included in the main Table of Contents). If supplemental materials are included with the Proposal, each copy of the Proposal should include such supplemental materials. Supplemental information (i.e., information not required) and attachments included by the Offeror should be clearly identified in the Table of Contents and provided as a separate section.

5.1.4 VOTING SYSTEM SOLUTION

Offerors should, at a minimum, restate each of the items below and provide a detailed response to that item immediately thereafter.

- a. Provide an overview of your proposed voting system solution including how the SEC and county systems will interact.
- b. Describe, in outline form, the workflow for conducting an election using your proposed voting system solution including all steps required from defining the election, ballot preparation through tabulation and reporting.
- c. Describe the security features of your proposed voting system solution.
- d. Provide a copy of the certification report from the independent testing laboratory.
- e. Does your proposed VSS meet the proposed new Voluntary Voting System Guidelines (VVSG)?
- f. Describe any plans you have for future system enhancements to your proposed VSS.

- g. Where is your proposed VSS in its product useful lifecycle?
- h. Provide the expected useful life of your proposed voting system solution.
- i. What type of audit data is produced by your VSS?
- j. Describe any electronic poll book solution you offer, either through your company or through a subcontractor. The SEC may, dependent on pricing and available funding, purchase electronic poll books as part of the VSS.

VSS Hardware

- k. Provide a description and explanation of your proposed voting system solution's hardware, to include, but not limited to, devices that will be used at the SEC and counties to create and maintain election definitions, produce ballots, allow for all types of voting, tabulation of results and conducting post-election audits.
- l. Describe how the voter's ballot is read by the scanner.

VSS Software

- m. Provide a description of the capabilities of your proposed voting system solution's software used at the SEC and county boards of registration and elections.

VSS Precinct Configuration

- n. Describe a typical precinct configuration.
- o. Describe the procedures poll workers will follow to open and close the polls.
- p. Describe power requirements for making VSS electrical connections at the polling place and features of the voting device to include battery backup, etc. Describe any power considerations at the polling place.
- q. Describe the size, weight, setup, and storage requirements for your proposed voting system solution. Include any means by which the equipment is protected from damage.
- r. Describe the physical storage requirements for your proposed VSS. This should include any associated equipment including how many can be stacked, whether power is required for storage, the practical temperature and humidity limits the voting device can withstand, other limitations, etc.
- s. Describe the procedure for transferring precinct vote totals to the county including any backup system in place in case this process fails.
- t. Describe the precinct reporting features.

Voter Accessibility and Ease of Use

- u. Describe the voter interface.
- v. Describe how offices, candidates, and ballot questions are presented to voters.

- w. Describe how the voter makes selections and marks their ballot. Provide instructions provided to the voter by the system.
- x. Describe how a voter makes changes to their ballot.
- y. Describe how a voter is alerted of undervotes and overvotes. If applicable, describe how your system prevents overvotes.
- z. Describe how a voter casts a ballot.
- aa. Describe how the voter receives confirmation of his/her vote.
- bb. Describe features that make the system accessible to voters with disabilities. Describe how the voter votes using each accessibility feature. Describe curbside voting options.

Technical Requirements

- cc. Describe how your proposed system uses data exported from a voter registration system.
- dd. Describe the backup/recovery features of your proposed voting system solution.

VSS Testing

- ee. Describe how Logic and Accuracy (L&A) testing is performed.

5.1.5 EXPERIENCE AND CAPABILITY

Offerors should, at a minimum, restate each of the items below and provide a detailed response to that item immediately thereafter.

- a. Describe your company's history with a detailed description of your election expertise and experience in performing the services required, number of employees; and office locations.
- b. Describe your company's experience implementing statewide or large county/jurisdiction voting systems. (Large is defined as greater than or equal to 1 million registered voters).
- c. Provide a list of current customers, the type of voting system used and its implementation date.
- d. Provide the total number of company employees dedicated solely to the support of election related products and services.
- e. Provide a description of your capacity to manufacture and deploy your proposed voting system within the period specified in this Request for Proposals (RFP). Disclose any parts or services obtained from outside of the continental United States.
- f. Describe any absentee ballot mailing services you offer.
- g. Provide the location of the manufacturer of your proposed voting system solution.

- h. Explain your capacity to manufacture and supply replacement/spare parts for your proposed voting system over the life expectancy of the system.
- i. Disclose any actual or perceived conflicts of interest that may arise from the submission of your proposal for evaluation or from being awarded the contract.
- j. Disclose any voting system related litigation you have had within the last five (5) years.

5.1.6 PROJECT MANAGEMENT, TRAINING AND IMPLEMENTATION

Offerors should, at a minimum, restate each of the items below and provide a detailed response to that item immediately thereafter.

- a. Describe your project management methodology.
- b. Describe your implementation strategy including, but not limited to, configuration, acceptance testing, and training for all state and county system users. Use a chart showing the steps and projected length of time to complete each implementation step for all institutions. Provide detailed implementation timelines and resources.
- c. Describe your implementation plan with proposed milestones.
- d. Identify key employees who will serve as points of contact.
- e. Identify and provide brief biographies of the staff that would be involved in the implementation of the VSS.
- f. Provide the location of your technical support staff.
- g. Identify members of your companies training team for this contract.

Training and Support

- h. Describe your role-specific training for SEC and county voting system technical staff.
- i. Provide your detailed training plan, including dates, number of classes, etc.
- j. Provide examples of all training materials.

5.1.7 TECHNICAL SUPPORT AND DOCUMENTATION

Offerors should, at a minimum, restate each of the items below and provide a detailed response to that item immediately thereafter.

Describe all hardware and software technical support options for your proposed voting system solution.

- a. List and describe all documentation to be provided to each county and the SEC such as, but not limited to, reference manuals, field manuals, procedures, and quick reference guides. Provide examples.
- b. Describe the process by which the SEC and counties will be notified of any technical service bulletins and any other updates to documentation and how those bulletins and updates will be distributed.

5.1.8 WARRANTY AND POST WARRANTY

Offerors should, at a minimum, restate each of the items below and provide a detailed response to that item immediately thereafter.

- a. Describe all hardware and software warranty and post warranty maintenance and support options available for your proposed voting system solution.
- b. Define all consumables and proposed timeline for replacement.
- c. List any proprietary hardware and consumables that must be purchased specifically from the Contractor.
- d. Describe the processes for returning, replacing, or repairing failed components of the proposed VSS.
- e. Describe your preventative maintenance.

5.2 **BUSINESS PROPOSAL**

The SEC desires to purchase the VSS but, dependent on available funding, may consider a multi-year lease option. As such, Offerors should submit business proposals for each financing method below. The State will determine which option is in the State's best interest.

Offerors must submit their Business Proposal as a separate document. The Business Proposal should not be included in the Technical Proposal.

Business Proposal - Purchase

Offerors should complete and submit Appendix D, Business Proposal. Appendix D includes the following:

Section 1: Total Fixed VSS Purchase Price

Offerors should include their total fixed amounts for all hardware, software, implementation services, and any other amounts for a complete turnkey solution to the SEC and the forty-six (46) counties of South Carolina.

Section 2: Hardware and Software Maintenance for the SEC and each county

Offerors should include their total fixed amounts for maintenance coverage for all hardware and software for the SEC and each the forty-six (46) counties of South Carolina for the life of the contract.

Section 3: Ballots and Consumables

Offerors should include their total fixed amounts for all consumables and the cost of paper ballots for Presidential Preference Primaries (two every four years) statewide primaries/runoffs and general elections based on 3.5 million registered voters.

Section 4: Electronic Poll Books

Offerors should include their total fixed amounts for electronic poll books. The SEC may, dependent on quoted pricing and available funding, purchase electronic poll books as part of the VSS.

Business Proposal - Leasing

Offerors should submit a lease option to include their total fixed amount on a per month basis which shall include all services, maintenance, hardware, software, delivery, training, interest rate, etc. and applicable taxes as specified in the solicitation.

All Offerors should include an amortization schedule with their lease proposal for each VSS component for the entire contract term. The SEC will be reimbursed or credited for the amortized costs of VSS components exchanged for products with newer technology at any point during the contract term.

If the SEC elects a multi-year lease option the State's standard equipment agreement is required (please see 1.35).

PART 6

AWARD CRITERIA

This Request for Proposal will use a two-phase scoring approach.

Phase One Scoring: In Phase One Offers will be evaluated subjectively by the Evaluation Panel using the evaluation factors listed below (see Phase One Scoring) which does not include the on-site presentation and business proposal. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive and responsible Offerors will be ranked from most advantageous to least advantageous.

Phase Two Scoring: The State may entertain on-site presentations from the highest ranked responsive and responsible Offerors after points from proposal evaluations in Phase One Scoring are tallied that have a mathematical possibility of being the highest ranked Offeror after the addition of points from Phase Two (on-site presentation and business proposal). The on-site presentation shall provide clarity or verify the contents and the representations made in the Offerors technical response.

Phase One Scoring

- 1) **Voting System Solution:** The evaluation panel will use the information submitted in response to Part 5, Information for Offerors to Submit, 5.1.4 Voting System Solution, a. through ee. to evaluate this criterion. Each evaluation panel member will assign points subjectively.
- 2) **Experience and Capability:** The evaluation panel will use the information submitted in response to Part 5, Information for Offerors to Submit, 5.1.5, Experience and Capability, a. through j. to evaluate this criterion. Each evaluation panel member will assign points subjectively.
- 3) **Project Management, Training and Implementation:** The evaluation panel will use the information submitted in response to Part 5, Information for Offerors to Submit, 5.1.6, Project Management, Training and Implementation, a. through j. to evaluate this criterion. Each evaluation panel member will assign points subjectively.
- 4) **Technical Support and Documentation:** The evaluation panel will use the information submitted in response to Part 5, Information for Offerors to Submit, 5.1.7, Technical Support and Documentation, a. through c. to evaluate this criterion. Each evaluation panel member will assign points subjectively.
- 5) **Warranty and Post Warranty:** The evaluation panel will use the information submitted in response to Part 5, Information for Offerors to Submit, 5.1.8, Warranty and Post Warranty, a. through e. to evaluate this criterion. Each evaluation panel member will assign points subjectively.

Phase Two Scoring (On-Site Presentations)

- 1) **On-site Presentation**: The evaluation panel will use the on-site presentation to evaluate this criterion. Each evaluation panel member will assign points subjectively.
- 2) **Business Proposal**: Points will be provided to the evaluation panel by the Procurement Officer. The Procurement Officer will assign points using only the Grand Totals from Sections 1, 2 and 3 of Appendix D, Business Proposal. Points will be provided to the evaluation panel by the Procurement Officer once the evaluation panel has completed and finalized their scoring for the on-site presentation (award criteria 1).

PART 7

TERMS AND CONDITIONS -- A. GENERAL

7.1 ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015): (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law.

7.2 BANKRUPTCY - GENERAL (FEB 2015): (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

7.3 CHOICE-OF-LAW (JAN 2006): The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

7.4 CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE (FEB 2015): (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the state's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving

priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

7.5 DISCOUNT FOR PROMPT PAYMENT (JAN 2006): (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

7.6 DISPUTES (JAN 2006): (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

7.7 EQUAL OPPORTUNITY (JAN 2006): Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

7.8 FALSE CLAIMS (JAN 2006): According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

7.9 FIXED PRICING REQUIRED (JAN 2006): Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract. This clause does not prohibit contractor from offering lower pricing after award.

7.10 NO INDEMNITY OR DEFENSE (FEB 2015): Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

7.11 NOTICE (JAN 2006): (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

7.12 OPEN TRADE (JUN 2015): During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

7.13 PAYMENT AND INTEREST (FEB 2015): (a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off.

7.14 PUBLICITY (JAN 2006): Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

7.15 PURCHASE ORDERS (JAN 2006): Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

7.16 SURVIVAL OF OBLIGATIONS (JAN 2006): The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

7.17 TAXES (JAN 2006): Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.

7.18 TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006): Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

7.19 THIRD PARTY BENEFICIARY (JAN 2006): This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

7.20 WAIVER (JAN 2006): The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing.

PART 7

TERMS AND CONDITIONS -- B. SPECIAL

7.21 BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015): (a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.

- (b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State.
- (c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information.

7.22 CHANGES (JAN 2006): (1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

7.23 CISG (JAN 2006): The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.

7.24 COMPLIANCE WITH LAWS (JAN 2006): During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

7.25 CONFERENCE -- PRE-PERFORMANCE (JAN 2006): Unless waived by the Procurement Officer, a pre-performance conference between the contractor, state and Procurement Officer shall be held at a location selected by the state within five (5) days after final award, and prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense.

7.26 CONTRACT DOCUMENTS & ORDER OF PRECEDENCE—SOFTWARE LICENSING—SINGLE AGENCY (FEB 2015): Notwithstanding the clause entitled "Contract Documents & Order of Precedence," but as provided in the clause titled "Software Licensing Agreements—Single Solicitation," any contract awarded pursuant to this solicitation shall not include a software licensing agreement. Further, the document titled *South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency*, which is attached hereto as an exhibit, is offered as information only and does not form part of the contract.

7.27 CONTRACT LIMITATIONS (JAN 2006): No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment.

7.28 CONTRACTOR'S LIABILITY INSURANCE - GENERAL (FEB 2015): (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

(b) Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

(f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be

changed, cancelled, or replaced.

(g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.29 CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015): [ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially-available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.]

(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.

(b) Coverage must include claims for:

(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;

(ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;

(iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and

(iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.

(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.

(d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)

(e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) dollars aggregate.

(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

(h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.

(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.

(l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

7.30 CONTRACTOR PERSONNEL (JAN 2006): The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

7.31 CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006): The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

7.32 CONTRACT INTERPRETATION: In the event there are any disagreements between the parties with regards to the application of this contract or the requirements of the SEC arising from any interpretation of the Request for Proposal, this contract, or otherwise, Contractor agrees to defer to the reasonable interpretations of the SEC as from time to time may be made by the SEC. This provision applies to all matters including those arising from disputes concerning whether Contractor is required to provide some service or item including scope of work issues and whether particular items or services were included in the scope of work agreed to by

the parties in this contract or otherwise. In summary, if both parties have a reasonable interpretation regarding application of the contract, Contractor agrees to defer to the SEC's interpretation.

7.33 CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006): Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the work.

7.34 DEFAULT (JAN 2006): (a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted

and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

7.35 DISPOSAL OF PACKAGING (JAN 2006): Contractor shall dispose of all wrappings, crating, and other disposable materials pertaining to this contract at the end of each working day and upon completion of installation.

7.36 ILLEGAL IMMIGRATION (NOV 2008): (An overview is available at www.procurement.sc.gov) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

7.37 INDEMNIFICATION-THIRD PARTY CLAIMS - GENERAL (NOV 2011): Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnatee, and whether or not such claims are made by a third party or an Indemnatee; however, if an Indemnatee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnatee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South

Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

7.38 INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015):

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter “action”) of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

(b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractors ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

7.39 INDEMNIFICATION-INTELLECTUAL PROPERTY (JAN 2006):

(a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is

practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

7.40 INFORMATION SECURITY - DEFINITIONS (FEB 2015): The following definitions are used in those clauses that cross reference this clause.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.

Data means a subset of information in an electronic format that allows it to be retrieved or transmitted.

Government information means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.

Information means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Public information means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.

Software means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract.

Third party means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier.

Unrestricted information means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.

Web-based service means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services.

7.41 INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015): (a)

Definitions. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause—

Clearing means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.

Intrusion means an unauthorized act of bypassing the security mechanisms of a system.

Media means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.

Safeguarding means measures or controls that are prescribed to protect information.

Voice means all oral information regardless of transmission protocol.

(b) *Safeguarding Information.* Without limiting any other legal or contractual obligations, contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, contractor shall apply security controls when the contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability.

(c) *Safeguarding requirements and procedures.* Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

(1) Protecting information on public computers or Web sites: Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800–88, Guidelines for Media Sanitization, at http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf.

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise:

(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

(d) *Subcontracts.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.

(e) *Other contractual requirements regarding the safeguarding of information.* This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems.

7.42 INFORMATION SECURITY – LOCATION OF DATA (FEB 2015): Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier.

7.43 INFORMATION USE AND DISCLOSURE (FEB 2015): Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

(b) *Legal mandates.* Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.

(c) *Flow down.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.

(d) *Collecting Information.* Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.

(e) *Rights, Disclosure and Use.* Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

(f) *Return.* Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).

(g) *Privacy Policy & Applicable Laws.* Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government

information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards.

(h) *Actions Following Disclosure*. Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) *Survival & Remedy*. All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause.

7.44 INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015): To the extent applicable:

(a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. Section 1-11-490.

(b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the Using Governmental Unit is not a licensee.

(c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. Sections 30-2-10, et seq.

(d) Personal Identifying Information Privacy Protection, S.C. Code Ann. Sections 30-2-310 et seq.

(e) Data Breach Notification, 2014 Act No. 286, Section 117.117, as revised in any future annual appropriations act.

7.45 LICENSES AND PERMITS (JAN 2006): During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

7.46 MATERIAL AND WORKMANSHIP (JAN 2006): Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended.

7.47 OFFSHORE CONTRACTING PROHIBITED (FEB 2015): No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States.

7.48 OWNERSHIP OF DATA AND MATERIALS (JAN 2006): All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State.

7.49 SECURITY FOR PERFORMANCE, DAMAGES: As a condition of the execution of the contract, the Contractor shall supply a certificate of deposit; cash; an unconditional, irrevocable, standby letter of credit; or provide other financial arrangements whereby funds are pledged to the benefit of the State, are not under the control of the Contractor, are payable to the State upon written demand to the holder of the security, and are subject to the direction of the State if any of the circumstances set forth in sub-sections below occur. This security will protect, indemnify, and save harmless the State from all costs and damages by reason of the Contractor's default, breach, or failure to satisfactorily complete any of the following terms:

- a) Payment to all entities, individuals, and the like furnishing of labor or materials in connection with this contract; and/or
- b) The successful execution of the final implementation plan, including satisfactorily meeting the performance or test requirements on the dates specified in the final implementation plan and the acceptance requirements and/or
- c) Full and satisfactory performance of the ongoing obligations contained in the subsequent contract between the State and the Contractor.
- d) In the event of any condition of breach or other circumstance, such as those set forth above, attributable to the Contractor, the State shall have the right to draw against the security such sums as are necessary to make the State whole, to secure and compensate the State for substituted services or other forms of relief made necessary by the breach. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which the State may be entitled.
- e) The security shall before the benefit of the Sate, payable only to the State at its discretion pursuant to the terms of this section, shall be in the face amount of the contract and shall be non-exclusive and in addition to all other remedies available to the State under this contract, or by law.
- f) The Contractor shall establish the security not later than ten (10) days after the Intent To Award a contract becomes the official statement of award and failure to satisfy this requirement will void the contract.
- g) Any interest or other income resulting from the security shall become and remain the property and possession of the Contractor and shall be payable to the Contractor.
- h) The Contractor may request a reduction in the security on an annual basis, no earlier than twelve (12) months after the first (1st) anniversary date of acceptance of the service, and the State's consideration of such request shall take into account performance, and likelihood of the need for future protection provided by the security to the State.

7.50 PRICE ADJUSTMENTS (JAN 2006): (1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the Contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or,
- (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if

otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

7.51 PRICE ADJUSTMENTS -- LIMITED BY CPI "ALL ITEMS" (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), "all items" for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov

7.52 PRICING DATA -- AUDIT -- INSPECTION (JAN 2006): [Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

7.53 RELATIONSHIP OF THE PARTIES (JAN 2006): Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

7.54 SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015): The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information provided in Offeror's Response to SPSAQ; (ii) agrees to provide the Using Governmental Unit with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, the Using Agency's lack of objection does not constitute a waiver.

7.55 SHIPPING / RISK OF LOSS (JAN 2006): F.O.B. Destination. Destination is the shipping dock of the Using Governmental Units' designated receiving site, or other locations, as specified herein.

7.56 SOFTWARE LICENSES (JAN 2006): Proprietary Software: Proprietary software is non-custom written, non-made for hire computer software supplied by the contractor and documentation used to describe, maintain and use the software.

License: The State is hereby granted a non-exclusive, fully paid perpetual license to use the proprietary software acquired hereunder.

Title: Title to any proprietary software provided by the Contractor to the State will remain with the Contractor.

Trade Secrets: The State agrees that the proprietary software is a trade secret of the contractor. The State agrees to take reasonable precautions to protect the trade secret nature of the proprietary software and to prevent its disclosure to unauthorized personnel. The license herein granted cannot be transferred, assigned, or made available by the State for use by any other individual, firm, partnership, or legal entity not affiliated, associated, or connected with the State without the prior expressed written consent of the contractor, which consent will not be unreasonably withheld. Such transfer shall also be conditioned upon the execution by the transferee of a written declaration agreeing to be bound by the terms and conditions of confidentiality provided for in this section.

Source Code: Source code includes files used by assembly, basic, c or other language compatibles to produce object modules for linkage into applications programs. The source code media will contain source code, files for compiling and linking software, and any other files and documentation available in machine-readable form to facilitate compiling and linking the code.

In the event the contractor, at any point during the continued installation and operation of the products acquired under this contract, discontinues the conduct of business, or for any reason fails to continue to support its proprietary software, it will either make provision for the continued support under the same terms and conditions or provide the State with a copy of the source code for said proprietary software, at no expense to the State.

Export Control: The State acknowledges that the products acquired hereunder may be licensable by the U. S. Government. It further acknowledges that a valid export license must be obtained from the Department of Commerce prior to export of said products.

Customized Software: Customized software is made-for-hire, custom written and customer specific software or customizations to proprietary software developed for the State by contractor and documentation used to describe, maintain and use the software.

Title: Title to the customized software vests in the State as set forth herein. Contractor shall thereafter have no right, title or interest in any customized software. As herein used, title includes providing to the State all intellectual elements of the customized software including, but not limited to, developmental work product, notes, object and source codes, documentation, and any other items which would aid the State in understanding, using, maintaining, and enhancing said customized software.

Software Tools: The contractor shall provide to the STATE, simultaneous with its initial installation, and any subsequent enhancements, upgrades, fixes, etc., software tools (including, but not limited to compilers, editors, etc.) that the STATE would require to maintain or enhance the customized software. The price for said tools and the cost to train State personnel to maintain and/or to enhance the customized software shall be noted separately and included in the contractor's cost proposal submitted to the State in response to the State's solicitation.

Escrow for Source Code: In the event the contractor at any point during the continued installation and operation of the software herein acquired discontinues the conduct of business or for any other reason fails to continue to support the software, the state shall be provided a copy of the source code for said software within thirty days at no expense to the State.

For the effective term of this contract, contractor will provide, to a mutually agreed upon escrow agent in the United States, the most recent version of the source code on magnetic media.

Proprietary source code shall be deposited into the escrow account within fifteen (15) days of the initiation of the contract, or any major update, non-customized enhancement, version or release of said licensed software.

The source code may be accessed only upon the following conditions:

- a. Contractor refuses to provide software maintenance, bug fixes, upgrades, updates and/or enhancement services under the terms set forth in this contract or as generally provided similarly situated customers; or
- b. Contractor ceases to do business or exist as a valid business entity, as evidenced by an adjudication of bankruptcy or other definitive measure of cessation of operations.

With regards to proprietary software, the state may not sell, assign lease, or otherwise provide said source code(s) to any other person or entity, regardless of modification, without the express written consent of contractor, its successors, and assigns.

7.57 SOFTWARE LICENSING AGREEMENTS—SINGLE SOLICITATION (FEB 2015):

(a) Definitions. As used in this clause, these terms are defined as follows:

“Commercial Off-The-Shelf (COTS) Software” means software used with no customization and for which source code is not made available to licensees.

“Configuration” means any customer-specific modification to software that does not require changes to the software’s source code, such as rules-based, rules engine based, or parameter driven modifications to configure the software.

“Customization” means any customer-specific modification to software that requires changes to the software’s source code.

“Firmware” means software sold or licensed only in conjunction with machines, designed for execution only on a machine with which it is provided, designed only for machines other than a dedicated computer, and embedded into or installed on the machine by the machine’s manufacturer or seller.

"Licensor" means an entity that owns the intellectual property rights for an item of software or has the authority to license or sublicense the software directly to the using governmental unit.

"Piggyback" means the document attached to this solicitation and entitled *South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency*, which serves as South Carolina's standard amendment to a licensor's standard software licensing agreement (regardless of how denominated, e.g., master software licensing agreement, end user license agreement) for COTS. [Note: While the piggyback is generally indicative of what the State finds acceptable, terms in a Licensor’s standard software licensing agreement may need to be negotiated.]

"Software" means a combination of computer instructions and data definitions that enable computer hardware to perform computational or control functions, excluding firmware.

"Software licensing agreement" means any agreement, regardless of how designated, that defines the intellectual property rights for, or the rights to use, any software product. A software licensing agreement must address only terms directly associated with licensing the right to use the software and must not address any of the work governed by the contract or any services (other than warranty services regarding the software code or associated documentation).

“Software maintenance” means the process of modifying software after delivery to correct faults, improve performance or other attributes, or adapt to a changed environment. (Reference ISO/IEC 14764:2006, as amended or superseded.) Software maintenance does not include any customization or configuration.

“Software product” means any COTS which you propose to provide pursuant to the contract.

“Source code” means computer instructions and data definitions expressed in a form suitable for input into an assembler, compiler or other translator.

(b) Contract and Software Licensing Agreement are Separate. The State seeks to establish related but independent agreements, one with each applicable licensor of COTS and one with the contractor - regardless of whether the licensor and the contractor are the same or different entities. As provided in the clause titled “Bid / Proposal As Offer To Contract,” a contract between the State and the contractor results from an award made pursuant to this solicitation. In contrast, the State’s acceptance of your offer does not serve as the State’s acceptance of any software licensing agreement; rather, software licensing agreements must be separately executed in order to be binding, regardless of whether the license to use the software will be granted by you or a third party. The contract, as defined in the clause titled "Definitions,” will address all work (excluding the use

rights for any software product) and all terms regarding pricing, payment, and delivery of any software product. Accordingly, the State intends to pay contractor in order to acquire license rights for any software product, but the license rights will be governed by a software licensing agreement with the licensor.

(c) Critical Instructions. (1) Your offer must identify each software product you propose to provide, identify the licensor, and explain which of the following licensing models apply: (i) you intend to license (or sublicense) the item directly to the State, or (ii) you intend to "resell" or distribute the item to the State (with licensing handled directly with the third-party licensor). You should use the Software Table attached to this solicitation to assist you in providing this information. **(2) Your offer must NOT include any software licensing agreements; however, for any software product identified in your offer, you must submit a software licensing agreement upon request of the procurement officer.** You must be prepared to provide any requested software licensing agreement within one business day of receiving a request. (3) Regardless of your licensing model, your price must include the cost of providing every software product you propose to provide to the State and those terms will form part of the contract.

(d) Pre-Condition of Award. If the work you are offering to perform is dependent upon the licensing of a software product by the State and the State is unsuccessful in negotiating an acceptable software licensing agreement for any software product for which it finds such an agreement necessary, your offer will be rejected. To facilitate the timely and successful negotiation of a software licensing agreement deemed necessary by the State, the State may ask you, after opening but prior to award, to acquire from the licensor an executed copy of the piggyback. You should communicate with the licensors for any major or critical software product well in advance of submitting a proposal, and licensors should be informed that few changes will be made to the piggyback. [The State already has, and continues to enter into, standing, statewide, licensing agreements for a variety of computer programs. Without limiting any of the above requirements, an applicable agreement may already exist for one or more items of COTS you have identified.]

7.58 TERM OF CONTRACT -- EFFECTIVE DATE (JAN 2006):

Maximum Contract Term: July 1, 2019 through June 30, 2026.

The effective date of this contract is the first day of the Maximum Contract Term as specified on the final statement of award. This contract expires no later than the last date stated on the final statement of award.

7.59 TERMINATION FOR CONVENIENCE -- INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006): Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination.

7.60 TERMINATION FOR CONVENIENCE (JAN 2006): (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information,

and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for supplies or services accepted under the contract;

(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;

(iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause.

PART 8

ATTACHMENTS/APPENDICES TO THE SOLICITATION

- Attachment 1 Important Tax Notice – Nonresidents Only
- Attachment 2 Offeror’s Checklist
- Attachment 3 Minority Participation Form
- Attachment 4 Service Provider Security Assessment Questionnaire
- Attachment 5 South Carolina Standard Amendment to End User License Agreements For Commercial Off-The-Shelf Software Single Agency
- Attachment 6 State of South Carolina Standard Equipment Agreement
- Appendix A On-Site Presentation Agenda Format
- Appendix B Number of Precincts and Registered Voters by County as of November 2018
- Appendix C Absentee Participation Totals for 11/06/2018 Statewide General Election
- Appendix C-1 Absentee Participation Totals for 11/08/2018 Statewide General Election
- Appendix D Business Proposal

Attachment 1**IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at www.sctax.org.

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**NONRESIDENT TAXPAYER
REGISTRATION AFFIDAVIT
INCOME TAX WITHHOLDING**

I-312
(Rev. 6/26/01)
3323

The undersigned nonresident taxpayer on oath, being first duly sworn, hereby certifies as follows:

1. Name of Nonresident Taxpayer: _____
2. Trade Name, if applicable (Doing Business As):

3. Mailing Address: _____
4. Federal Identification Number: _____
5. _____ Hiring or Contracting with:
Name: _____
Address: _____
- _____ Receiving Rentals or Royalties From:
Name: _____
Address: _____
- _____ Beneficiary of Trusts and Estates:
Name: _____
Address: _____
6. I hereby certify that the above named nonresident taxpayer is currently registered with (check the appropriate box):
☐ The South Carolina Secretary of State or
☐ The South Carolina Department of Revenue
 Date of Registration: _____
7. I understand that by this registration, the above named nonresident taxpayer has agreed to be subject to the jurisdiction of the South Carolina Department of Revenue and the courts of South Carolina to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties.
8. I understand the South Carolina Department of Revenue may revoke the withholding exemption granted under Code Sections 12-8-540 (rentals), 12-8-550 (temporarily doing business or professional services in South Carolina), and 12-8-570 (distributions to nonresident beneficiary by trusts or estates) at any time it determines that the above named nonresident taxpayer is not cooperating with the Department in the determination of its correct South Carolina tax liability.

The undersigned understands that any false statement contained herein could be punished by fine, imprisonment or both.

Recognizing that I am subject to the criminal penalties under Code Section 12-54-44 (B) (6) (a) (i), I declare that I have examined this affidavit and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Nonresident Taxpayer (Owner, Partner or Corporate Officer, when relevant) (Seal) _____
Date

If Corporate officer state title: _____

(Name - Please Print)

Attachment 2

OFFEROR'S CHECKLIST *AVOID COMMON PROPOSAL MISTAKES*

Review this checklist prior to submitting your proposal.
If you fail to follow this checklist, you risk having your proposal rejected.

- DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS!
- UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES.
- REREAD YOUR ENTIRE PROPOSAL TO MAKE SURE YOUR PROPOSAL DOES NOT TAKE EXCEPTION TO ANY OF THE STATE'S MANDATORY REQUIREMENTS.
- MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL, OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE INSTRUCTIONS ENTITLED: SUBMITTING CONFIDENTIAL INFORMATION. *DO NOT MARK YOUR ENTIRE PROPOSAL AS CONFIDENTIAL, TRADE SECRET, OR PROTECTED! DO NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!*
- HAVE YOU PROPERLY ACKNOWLEDGED ALL AMENDMENTS? INSTRUCTIONS REGARDING HOW TO ACKNOWLEDGE AN AMENDMENT SHOULD APPEAR IN ALL AMENDMENTS ISSUED.
- MAKE SURE YOUR PROPOSAL INCLUDES A COPY OF THE SOLICITATION COVER PAGE. MAKE SURE THE COVER PAGE IS SIGNED BY A PERSON THAT IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS.
- MAKE SURE YOUR PROPOSAL INCLUDES THE NUMBER OF COPIES REQUESTED.
- CHECK TO ENSURE YOUR PROPOSAL INCLUDES EVERYTHING REQUESTED!
- IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! AFTER OPENING, IT IS TOO LATE! AS THIS SOLICITATION INCLUDES A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!

This checklist is included only as a reminder to help offerors avoid common mistakes.
Responsiveness will be evaluated against the solicitation, ***not*** against this checklist.
You do not need to return this checklist with your response.

Attachment 3**MINORITY PARTICIPATION (DEC 2015)**

Is the bidder a South Carolina Certified Minority Business? ☐ Yes ☐ No

Is the bidder a Minority Business certified by another governmental entity? ☐ Yes ☐ No

If so, please list the certifying governmental entity: _____

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? ☐ Yes ☐ No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor?

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? ☐ Yes ☐ No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? _____

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- ☐ Traditional minority
- ☐ Traditional minority, but female
- ☐ Women (Caucasian females)
- ☐ Hispanic minorities
- ☐ DOT referral (Traditional minority)
- ☐ DOT referral (Caucasian female)
- ☐ Temporary certification
- ☐ SBA 8 (a) certification referral
- ☐ Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

The Department of Administration, Division of Small and Minority Business Contracting and Certification, publishes a list of certified minority firms. The Minority Business Directory is available at the following URL: <http://osmba.sc.gov/directory.html>
[04-4015-3]

Attachment 4**SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE**

Instructions: (1) Attach additional pages or documents as appropriate and make sure answers cross reference to the questions below. (2) As used in this Questionnaire, the phrase “government information” shall have the meaning defined in the clause titled “Information Security.” (3) This Questionnaire must be read in conjunction with both of the following two clauses (a) Service Provider Security Assessment Questionnaire – Required, and (b) Service Provider Security Representation.

1. Describe your policies and procedures that ensure access to government information is limited to only those employees/Contractors who require access to perform your proposed services.
2. Describe your disaster recovery and business continuity plans.
3. What safeguards and practices do you have in place to vet employees and Contractors who have access to government information?
4. Describe and explain your security policies and procedures related to use of Contractors/sub-contractors.
5. List any certifications that you have that demonstrate that adequate security controls are in place to properly store, manage and process government information (for example, ISO or SSAE certifications). Will these certifications be in place for the duration of the contract? Will you provide the state with most recent and future audit reports related to these certifications?
6. Describe the policies, procedures and practices you have in place to provide for the physical security of your data centers and other sites where government information will be hosted, accessed or maintained?
7. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups?
8. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.
9. What controls are in place to detect security breaches? Do you log transactions and network activity? How long do you maintain these audit logs?

10. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?

11. Describe your incident response policies and practices.

12. Identify any third party which will host or have access to government information.

SIGNATURE OF PERSON AUTHORIZED TO REPRESENT THE ACCURACY OF THIS
INFORMATION ON BEHALF OF CONTRACTOR:

By: _____
(authorized signature)

(printed name of person signing above)

Its: _____
(title of person signing above)

Date: _____

Attachment 5

[Licensor's name]
[mm/dd/yyyy to mm/dd/yyyy]

SOUTH CAROLINA STANDARD AMENDMENT
TO
END USER LICENSE AGREEMENTS
FOR
COMMERCIAL OFF-THE-SHELF SOFTWARE

SINGLE AGENCY

This Agreement is made the _____ day of _____, 20__ (the "Effective Date") between [Company Name], a corporation organized and existing under the laws of [State], and having its principal office at [address] (hereinafter referred to as "Licensor") and [Agency Name], an instrumentality of the State of South Carolina (hereinafter referred to as "Licensee." Licensor and Licensee may also be referred to in this Agreement collectively as the "Parties."

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents.

Solicitation Description:	Solicitation No.:
LICENSOR.	INFORMATION TECHNOLOGY MANAGEMENT OFFICE , acting on behalf of Licensee.
By:	By:
Its:	Its:

Recitals

This document is being used in conjunction with a solicitation issued for a government procurement being conducted for Licensee; nevertheless, the Parties intend for this document (including any attachments) to memorialize a contractual relationship related to but independent of any contractual relationship entered into by an award issued pursuant to that solicitation.

Agreement

For the reasons recited above, and in consideration of the mutual covenants contained herein, the Parties agree as follows:

Definitions

Agreement means this South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software, not including any EULA or other attachments.

Authorized EULA means any EULAs attached as Exhibit "C", but does not include any document referenced or incorporated therein unless attached to this Agreement. Licensor warrants that every Authorized EULA is an unmodified copy of Licensor's standard form agreement.

Distributor means the generic category of entities authorized by Licensor, if any, that participate in the distribution chain between Licensor and Licensee, including, but not limited to, value added resellers (VARs), original equipment manufacturers (OEMs), distributors, dealers, independent sales organizations (ISOs), resellers, and retail outlets.

Distributor Contract means a contract between a Licensee and a Distributor by which Licensee can acquire licenses of the Software. Nothing in this agreement constitutes a representation or obligation that Licensor has made or will make its Software available through a Distributor.

Documentation means all materials supplied, directly or indirectly, to Licensees by Licensor, by any means or media that explain or facilitate the use of the Software, which may include, without limitation, any materials that describe the functional, operational, and/or performance capabilities of the Software; training materials; user, operator, system administration, technical, support, and other manuals or instructions; flow charts, and logic diagrams. Licensor warrants that the Documentation does and will continue to accurately describe the functional and operational characteristics of the Software. Licensor warrants that the Documentation will be contemporaneously updated to reflect any changes made to the Software.

End User License Agreement ("EULA") means any license agreement or other commercial agreement, regardless of how designated, pertaining to the right to use any Software, including, but not limited to, any such agreement proposed prior to or after execution of this Agreement, and including without limitation any such agreement that either is affixed to (e.g., shrinkwrap), imbedded in (e.g., clickwrap), or in any way accompanies the Software upon delivery. The term "EULA" does not include this Agreement. The term "EULA" does not include any contract awarded by or on behalf of a Licensee as a result of a formal solicitation (e.g., invitation for bids or request for proposals) issued by or on behalf of a licensee. The term "EULA" does not include a contract to the extent it governs software maintenance as defined in ISO/IEC 14764:2006.

ITMO means the Information Technology Management Office established by South Carolina Code Section 11-35-820, as amended, or its successor in interest. Pursuant to Section 11-35-510 of the South Carolina Code of Laws, ITMO is authorized to act as the statutory procurement agent for every South Carolina Governmental Body (as defined by S.C. Code Ann. § 11-35-310(18), as amended) covered by the South Carolina Consolidated Procurement Code. Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of Licensees. ITMO is not a party to this Agreement. Notwithstanding any other provision, ITMO bears no liability for any party's losses arising out of or relating in any way to this Agreement.

Ordering and Confirming Documents means those documents exchanged between a Licensee and the Licensor to memorialize the number and configuration of licenses ordered and provided, whether exchanged directly with Licensor or indirectly through a Distributor. By way of example, ordering documents may include a purchase order or other instrument submitted by Licensee, and confirming documents may include a software key or license-specific identifying information, an invoice, or another document submitted by Licensor.

Prior Agreement means a written agreement that was negotiated, signed using pen and paper, and executed by an authorized representative of a Licensee prior to the Effective Date of this Agreement.

Procurement Contract means any contract awarded pursuant to the Solicitation identified above by reference to its Solicitation Number and Solicitation Description.

Software means any computer program referenced on Exhibit "B", including any future service packs, maintenance updates, patches, fixes, or like modifications to the computer program by whatever name provided by Licensor, if any. In addition, Exhibit B excludes any computer program not identified in the Procurement Contract. For clarity, Exhibit B excludes all services, including without limitation, so-called "software-as-a-service" and "cloud services," application services, etc., even if included therein.

Attachments

Exhibit A – [RESERVED]

Exhibit B – Software List

Exhibit C - Authorized EULAs

1. RELATIONSHIP BETWEEN THIS AGREEMENT AND THE AUTHORIZED EULAs.

1.1 Agreement to Authorized EULAs. Subject to the provisions of this Agreement, Licensee agrees to the terms and conditions of the Authorized EULAs. Any EULA that is not an Authorized EULA is void and of no effect. Licensor represents that every EULA applicable to the computer programs referenced on Exhibit "B" has been attached to Exhibit "C" as an Authorized EULA.

1.2 Primacy of Agreement. The terms of this Agreement shall be given full effect prior to the application of any term in the Authorized EULAs. To the extent of any inconsistency or conflict, the terms of this Agreement take precedence over any similar terms in any Authorized EULAs. To the extent an Authorized EULA provides Licensee with options or rights in addition to or beyond those available under this Agreement, nothing in this Agreement is intended to limit Licensee's exercise of such options or rights.

1.3 Entire Agreement. Within the scope of this Agreement, as defined in Paragraph 2, this Agreement, Exhibit "B" (the Software List), and the Authorized EULAs constitute the entire agreement between the Parties and supersede all other prior or contemporaneous agreements, representations, or discussions, whether oral or written. This Agreement and the Authorized EULAs shall apply notwithstanding any conflicting or additional provisions in Ordering or Confirming Documents.

2. LIMITED SCOPE OF AGREEMENT.

2.1 This Agreement and the Authorized EULAs apply only to the use and licensing of Software by Licensee. All terms in an Authorized EULA regarding services (other than warranty services) are void.

2.2 Neither this Agreement nor an Authorized EULA authorize any Licensee to pay any funds directly to Licensor. All terms in a EULA regarding pricing, payment, interest, and delivery are void. This Agreement and

the Authorized EULAs are independent of, and do not form a part of a Procurement Contract. Ordering and Confirming Documents may not be issued pursuant to an Authorized EULA, but must be issued pursuant to a Procurement Contract. Ordering and Confirming Documents form a part of this Agreement and the Authorized EULAs but only to the extent they memorialize the number of, configuration of, and prices paid for licenses ordered and provided. Ordering and Confirming Documents may not supplement, alter, or modify any provision of this Agreement or an Authorized EULA.

2.3 Subject to the limits of item 2.1, this Agreement and the Authorized EULAs apply to all licenses of Software licensed from Licensor by a Licensee during the term of this Agreement, whether acquired directly from Licensor or indirectly through a Distributor.

3. TERM OF AGREEMENT.

3.1 With regard to the licensure of any particular copy of Software, the terms of this Agreement and the Authorized EULAs shall continue to apply to that license notwithstanding the expiration of this Agreement.

3.2 This Agreement shall be in effect for seven years from the Effective Date. Expiration of this Agreement does not terminate any particular license of Software.

4. LICENSE GRANT.

4.1 Any rights granted by Licensor to Licensee in an Authorized EULA are in addition to any rights granted by this Paragraph 4. Licensor agrees that Licensee shall have the rights that are set forth in items 4.2, 4.3, 4.4, and 4.5 below.

4.2 For each license acquired, the Software may be:

4.2.1 Used or copied for use in or with the computer or computers for which it was acquired, including without limitation use at any of Licensee's installations to which such computer or computers may be transferred;

4.2.2 Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;

4.2.3 Reproduced for safekeeping (archives) or backup purposes;

4.2.4 Modified, adapted, or combined with other computer programs ~~or computer data bases~~; however, a Licensee may not reverse engineer, decompile or disassemble the Software except to the extent necessary to create interfaces to, or allow inter-operability with, other computer programs or computer data bases;

4.2.5 Disclosed to and used by support service contractors or their subcontractors for the benefit of the Licensee, subject to the restrictions set forth in this Agreement; and,

4.2.6 Used or copied for use in or transferred to a replacement computer.

4.3 Notwithstanding any other provision, Licensee's fair use rights (17 U.S.C. § 107) are not limited in any way.

5. INTELLECTUAL PROPERTY INFRINGEMENT.

5.1 As used in this Paragraph 5, these terms are defined as follows: "Acquired Item(s)" means the rights, Software, or services, if any, furnished under this Agreement or any Authorized EULA. "Affiliate" means any business connected with or related to Licensor. "Indemnitee" means Licensee, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. "IP Right(s)" means a copyright, patent, trademark, trade secret, or any other proprietary right.

5.2 In the event of any claim by any third party against an Indemnitee asserting or involving an IP Right which concerns any Acquired Item(s), Licensor shall defend Indemnitee, at its expense, against all actions, proceedings or claims of any nature and shall, without limitation, indemnify Indemnitee for and against any loss, cost, expense, attorneys' fees and expenses (including inside counsel), or liability, resulting from or related to such claim, whether or not such claim is successful.

5.3 Indemnitee must notify Licensor in writing within a reasonable period of time after Indemnitee first receives written notice of any such claim or action. Indemnitee's failure to provide or delay in providing such notice will relieve Licensor of its obligations under this Paragraph 5 only if and to the extent that such delay or failure materially prejudices Licensor's ability to defend such claim. Indemnitee must reasonably cooperate with Licensor's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow Licensor sole control of the defense, so long as the defense is diligently and capably prosecuted. Licensee may participate in Licensor's defense of any action. Except for an injunction limited to requiring the cessation of use of an Acquired Item that is the subject of a claim, Licensor may not, without Licensee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened claim or action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened claim or action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Licensee's consent is necessary for any settlement that requires Licensee to part with any right or make any payment or subjects Licensee to any injunction, except for an injunction requiring cessation of use of an Acquired Item that is the subject of the claim.

5.4 In the event an injunction, order, or agreement shall be obtained against Licensee's use of any Acquired Item, Licensor shall, without in any way limiting its other obligations under this Agreement and at its sole expense: (a) use good faith, diligent efforts to procure for Licensee the right to continue to use, and to have used, the Acquired Item, and if such remedy is commercially impracticable, to then (b) replace or modify the Acquired Item so that it becomes non-infringing but only if the modification or replacement does not materially adversely affect the functionality of the Acquired Item or its use by Licensee. In the event that both of these remedies are commercially impracticable, Licensor may require that Licensee stop using the Acquired Item, refund to Licensee an amount equal to all money paid by Licensee therefore, and take all steps necessary to have any Indemnitees released from any further liability.

5.5 Licensor's obligations under this Paragraph 5 do not apply to a claim to the extent (a) that the claim is caused by a modification of Software made by Licensee; (b) that the claim is caused by Licensee's use of a superseded release of Software if the infringement would have been avoided by Licensee's timely implementation of an update or upgrade previously provided to Licensee, but only if such update or upgrade (1) was provided by Licensor at no cost or as part of either maintenance or a previous purchase by Licensee, and (2) does not materially adversely affect the functionality of the Acquired Item or its use by Licensee; (c) that the claim is caused by Licensee combining the Software with another computer program or hardware unless such combinations are recommended by the Documentation or otherwise suggested by Licensor or its Affiliates; (d) that the claim is caused by Licensee reverse engineering, decompiling, or disassembling Software; (e) that the

claim arises from Licensee's use of any Software that is open source or freeware, but only if the open source or freeware is not incorporated or combined by Licensor in Software provided by Licensor; (f) that the claim is caused (1) by modifications made to the Software by Licensor or its Affiliates in accordance with a detailed, exact statement of specifications furnished by Licensee unless Licensor or its Affiliates knew or should have known that compliance with the Licensee's specifications would infringe an IP right, or (2) by compliance by Licensor or its Affiliates with specifications furnished by Licensee if Licensee knowingly relied on a third party's product to develop the specifications provided to Licensor or its Affiliates and failed to identify such product to Licensor.

5.6 Notwithstanding any other provision, Licensor's obligations pursuant to this Paragraph 5 are without any limitation whatsoever. Licensor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

5.7 Paragraph 5 states Licensee's exclusive remedy for third party damages claims asserting a violation or infringement of the third party's intellectual property rights.

6. LIMITATION OF RECOVERY.

6.1 Limitation of Damages – Licensor. Except as provided in Paragraph 5 (Intellectual Property Infringement), Paragraph 7.1 (Right to Audit; Misuse of Data), and Paragraph 14.22 (Privacy), Licensor's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license the Software. The foregoing limitation applies to the exclusion of any other limitation or exclusion of the remedies available against Licensor, the liability of Licensor, or the damages recoverable from Licensor.

6.2 Limitation of Damages - Licensee. Except as provided in Paragraph 7.2 (Audit Remedy; Exclusivity), Licensee's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license Software. Licensee's total liability for any obligation arising under any clause imposing any duty of confidentiality or non-disclosure shall not exceed an amount equal to fifty thousand dollars. The foregoing limitations do not apply to a loss incurred by Licensor to the extent the loss results because Licensee has created a derivative work from, reverse assembled, reverse compiled, or otherwise reduced to human readable form the Software without Licensor's prior written consent. Nothing herein shall be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law.

7. AUDIT.

7.1 Right to Audit; Misuse of Data. Licensor has the right to audit Licensee at Licensor's expense. Licensor shall conduct an audit and use the information obtained in an audit only to enforce Licensor's rights under, and to determine whether Licensee is in compliance with, the terms of this Agreement and any Authorized EULAs. Any audit will be subject to a confidentiality obligation and will take place upon not fewer than 30 days notice, during Licensee's normal business hours, and in a manner that does not interfere unreasonably with Licensee's operations. Licensor's sole audit right regarding Licensee is provided by this Paragraph 7. Notwithstanding any other provision, Licensor's liability for intentional breach of its obligation regarding the use of information obtained in an audit is without any limitation whatsoever.

7.2 Audit Remedy; Exclusivity. If an audit reveals or Licensor otherwise discovers unlicensed use of Software by Licensee, Licensee shall either (a) promptly order and pay for sufficient licenses to permit all Software usage discovered and pay Licensor the difference between (i) the license fees that Licensee should

have paid for such Software, based upon actual usage, and (ii) the actual license fees that Licensee paid for the software, based upon the actual usage level for which such Software was licensed, or (b) immediately terminate any unlicensed use of Software and pay any applicable license fees for any noncompliance discovered. If a Distributor Contract exists, Licensee may order licenses from, and pay license fees to, a Distributor at a price established by a Distributor Contract. If Licensee's unlicensed use of the Software would be within the scope of license rights granted by this Agreement and the Authorized EULAs but for Licensee's failure to acquire an adequate number of licenses or an available license, Licensors exclusive remedy for the unlicensed use shall be the remedy provided by this item 7.2. If Licensee fails to execute either option within a reasonable time, the foregoing remedy will not be considered exclusive.

7.3 Licensors right to conduct an audit is limited by any applicable statutory or regulatory limitations on access to public records.

8. LICENSEE'S RECORDS. For each license of Software acquired pursuant to this Agreement, Licensee agrees to retain records of that license for one year beyond the duration of that license, provided that Licensee has no obligation to retain records of a license beyond one year after Licensee ceases to retain a copy of the Software to which a license applies. Licensors may access Licensee's records as provided in the South Carolina Freedom of Information Act and any other applicable law. Except as stated in this Agreement, Licensors agrees that Licensee has no obligation to retain any records.

9. CONFIDENTIALITY & NONDISCLOSURE. This Agreement and the Authorized EULAs are subject to public disclosure. All provisions of an Authorized EULA regarding confidentiality or nondisclosure are subject to the South Carolina Freedom of Information Act and other applicable laws. Any duty of confidentiality or nondisclosure established by an Authorized EULA applies only to Software and Documentation that has been conspicuously marked with the words confidential, proprietary, or trade secret.

10. TERMINATION. Licensors may not terminate either this Agreement or the Authorized EULAs in the absence of a breach by Licensee that would, under the common law, be material. Any termination by Licensors must be preceded by adequate notice and opportunity to cure. If Licensors exercises any termination rights under any Authorized EULA, Licensee may, in addition to any rights provided in the Authorized EULAs, continue using software pursuant to this Agreement and the Authorized EULAs for a period of six months in order to allow Licensee to convert from the use of Software, unless Licensee has violated the restrictions in paragraph 4.2.4. During the conversion period, and to the extent applicable Licensee shall pay any applicable, previously unpaid license fees at the price last available from Licensors to Licensee prior to termination or, at Licensee's option, at the price established by an applicable Distributor Contract, if any.

11. WARRANTIES. The warranties provided in this Paragraph 11 are in addition to any other warranties provided in the Authorized EULAs. Licensors warrants (a) that every item of Software, without unauthorized modification, will perform substantially in accordance with the Documentation applicable to the Software for a period of 365 days from the date the item of Software is installed by Licensee, (b) that Licensors has all necessary right and authority to license the Software and to grant the licenses provided hereunder, and (c) that there is currently no actual or threatened legal action against Licensors by any third party based on an alleged violation of an intellectual or proprietary property right that has not been disclosed to ITMO and that could adversely affect Licensors ability to license the use of the Software. Licensors agrees that it will not electronically repossess, trigger any lock, or use any device capable of halting operations or erasing or altering data or programs with regard to any Software that it has licensed to Licensee.

12. BANKRUPTCY.

12.1 Notice of Insolvency. Licensor shall provide ITMO and Licensee with written notice immediately upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against Licensor under the relevant law on insolvency or bankruptcy, or after the making by Licensor of any assignment or attempted assignment for the benefit of creditors or upon or after the institution of any proceedings for the liquidation or winding up of Licensor's business or for the termination of its corporate charter.

12.2 Rejection of Executory License. The Parties agree that the Software is "intellectual property" as defined in Section § 101(35A) of the U.S. Bankruptcy Code. Upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against the Licensor under the relevant law on insolvency or bankruptcy, this Agreement and the Authorized EULAs shall be governed by Section 365(n) of the U.S. Bankruptcy Code. If any person seeks to reject this Agreement or the Authorized EULAs pursuant to bankruptcy law, Licensee shall have the option of using the Software for either the original term of the Authorized EULAs or a period of five years after rejection is requested.

13. RIGHTS TO SOFTWARE OR DATABASE DEVELOPED BY LICENSEE. Nothing in this Agreement or any Authorized EULA shall be construed to give Licensor any rights with regard to computer programs developed by Licensee, regardless of whether or not such programs are connected to or embedded in Software or are functionally similar, in whole or part, to Software. Nothing in this paragraph grants a Licensee any rights to Licensor's intellectual property or to any derivative works.

14. GENERAL

14.1 Choice of Law & Choice of Forum. Both the rights and obligations of the Parties and this Agreement and any EULA, as well as any dispute, claim, or controversy arising out of or relating to this Agreement or any EULA, shall, in all respects, be established, interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, without regard to any provision governing conflicts of law. All disputes, claims, or controversies arising out of or in any way relating to this Agreement or any EULA shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina.

14.2 Sovereign Immunity. Title 11, Chapter 35, Article 17 constitutes a limited statutory waiver of sovereign immunity. Notwithstanding paragraph 14.1, Licensor agrees that neither this Agreement, any Authorized EULAs, nor any act by either ITMO or Licensee regarding this Agreement or any EULA is a waiver of either their sovereign immunity or their immunity under the Eleventh Amendment of the United States Constitution.

14.3 Subject to Applicable Law. This Agreement is entered into pursuant to the South Carolina Consolidated Procurement Code (Title 11, Chapter 35 of the South Carolina Code of Laws.) As a public entity, all of Licensee's obligations are subject to any applicable laws.

14.4 Alternative Dispute Resolution. No method of mandatory alternative dispute resolution shall apply to any dispute, claim, or controversy arising out of or relating to this Agreement or the Authorized EULAs.

14.5 CISG / UCITA. Neither the UN Convention on the International Sale of Goods nor the Uniform Computer Information Transactions Act (nor any non-uniform version) shall apply to this Agreement or the Authorized EULAs.

14.6 ITMO Participation In Contract Disputes. Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of Licensees. Accordingly, ITMO is not a party to this Agreement and need not be joined as a party to any dispute that may arise out of this Agreement. With regard to this Agreement, the officers, agents and employees of ITMO are acting solely in their official capacity and need not be joined as a party to any dispute that may arise out of this Agreement.

14.7 Notices. In addition to any other obligations the parties may have regarding notice, all **notices or other communications regarding termination, material breach, modification, or audit of this Agreement, an Authorized EULA, or a license covered by either shall be copied to ITMO at the following address.**

Information Technology Management Office
Procurement Services Division
1201 Main Street, Suite 600
Columbia, SC 29201

14.8 Third Party Beneficiary. This Agreement and the Authorized EULAs are made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement or the Authorized EULAs as a third party beneficiary or otherwise.

14.9 Assignment. Except as set forth below, neither party may assign or transfer this Agreement, the Authorized EULAs, or any rights regarding either, without the prior written consent of ITMO. Reference S.C. Code Ann. Regs § 19-445.2180. Such consent shall not be unreasonably withheld. Any attempted assignment, delegation or transfer in derogation of this Paragraph shall be null and void.

14.9.1 This Agreement and the Authorized EULAs, and any rights regarding either, may be assigned to an affiliates of the Licensor, or to successors-in-interest of substantially all the assets of the Licensor, if the assignee expressly assumes the Licensor's obligations under the assigned agreement. Licensor must give Licensee reasonable prior notice of any assignment. As used in this item, affiliate means a legal entity that controls, is controlled by, or is under common control with Licensor.

14.9.2 If Licensee is reorganized such that certain operations or functions are transferred from Licensee to a different public procurement unit, then in connection with such reorganization, a Licensee may, upon written notice to Licensor, transfer licenses to another public procurement unit provided that the transferee is performing some substantially similar business and/or operational functions as the original Licensee. Both entities shall execute such paperwork as Licensor may reasonably require.

14.10 Interpretation. Any question of interpretation or construction shall not be resolved by any rule providing for interpretation or construction against the party who causes the uncertainty to exist or against the drafters of this Agreement.

14.11 Headings. The headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of this Agreement.

14.12 Publicity. Licensor agrees not to refer to Licensees in such a manner as to state or imply that either Licensor or its Software is endorsed or preferred by Licensee, the State of South Carolina, or any unit of either. The foregoing shall not prohibit the Licensor from identifying a Licensee as a customer in a customer list.

14.13 Relationship Among Public Entities. Each Licensee's obligations and liabilities are independent of every other Licensee's obligations and liabilities. Termination of one Licensee does not constitute grounds for termination of a different Licensee.

14.14 Language of Agreement & Notices. The language of this Agreement is English. If translated into another language, this English version of the Agreement shall be controlling. All notices required or permitted to be given hereunder shall be written in the English language.

14.15 Survival of Obligations. The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Agreement shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Intellectual Property Infringement, Limitation of Recovery, Audit, Bankruptcy, and General.

14.16 Waiver & Modification. No waiver of any default by either party shall act as a waiver of a subsequent or different default. The provisions of this Agreement and the Authorized EULAs may not be modified or waived except by another agreement in writing executed by an authorized representative of Licensee and an authorized representative of Licensor.

14.17 Anti-Indemnification & Anti-Representation. Any provision in the Authorized EULAs is void to the extent it imposes an obligation upon ITMO or a Licensee that would properly be characterized as an indemnity. Licensee makes no representations or warranties to Licensor, and any language to the contrary is void.

14.18 Statute of Limitations. Any provision in the Authorized EULAs is void to the extent that it modifies the statute of limitations or alters the time period within which an action must be brought.

14.19 Non-appropriations. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

14.20 Attorneys' Fees. Except as otherwise provided in this Agreement, each party waives any claim it may have to recover attorneys' fees from any other party.

14.21 Users. A Licensee has no liability for any acts or omissions of any person that Licensee allows to use the Software, unless such acts or omissions are within the scope of that person's employment or have been properly authorized by Licensee.

14.22 Privacy. As used in this paragraph, the term 'data' means any information regarding any person or entity other than a Licensee that is gathered or acquired as a result of the Software licensed by Licensee being used. Except to the extent fully disclosed in writing (e.g., a privacy policy or the Documentation) prior to execution of this Agreement, Licensor represents that Software will not provide any entity other than Licensor with any data. Notwithstanding anything to the contrary, Licensor agrees (i) not to use or retain data for any purpose other than performing this contract, except to the extent that using or retaining state data is incidental to contract administration, such as financial, administrative, cost or pricing, and (ii) not to sell, trade, or release data. Upon request, Licensor shall provide written confirmation of compliance with this clause. Licensor agrees that Licensee has no adequate remedy at law for a violation of Licensor's obligations under this paragraph. Notwithstanding any other provision, Licensor's liability for breach of its obligation under this paragraph is without any limitation whatsoever.

EXHIBIT B
SOFTWARE LIST

Attachment 6

Form 80-SC-EL-1
 Adopted 05/27/80
 Revised 07/01/88

**STATE OF SOUTH CAROLINA
 STANDARD EQUIPMENT AGREEMENT**

This Agreement, made this _____ day of _____, 20____, between _____
 whose address is _____
 (Lessor) and _____, an agency of the State of South Carolina (Lessee).

If this Agreement is entered into as a result of a solicitation, in the event of an inconsistency between provisions of this Agreement and other terms of the solicitation, the inconsistency shall be resolved by giving precedence to the terms and conditions of the solicitation. This Agreement is entered into in connection with solicitation or contract number _____.

Lessor hereby leases to Lessee the equipment described on the attached Exhibit A, upon the following terms:

1. TERM OF LEASE

The term of this Agreement shall commence on the date of acceptance by Lessee and shall continue for a period of _____ unless sooner terminated by either party as provided herein. The initial term and renewal term cannot exceed a total of seven (7) years.

2. RENTAL

Lessee agrees to pay rental of: (1) _____ Dollars per _____ during the term of this Agreement, or (2) the amounts and upon the conditions stated in the Schedule of Payments attached as Exhibit B (To be provided by Offeror). The first rental payment shall be due and payable on the day after the date of acceptance by Lessee. Subsequent payments shall be due on the _____ day of each _____ thereafter.

South Carolina sales or use taxes shall be stated separately.

3. DELIVERY

Delivery shall be not later than _____ from date hereof, time being of the essence. Delivery costs shall be borne by, and such costs shall not exceed _____.

4. INSTALLATION

Lessor shall install the equipment at a suitable location designated by Lessee. Installation costs shall be borne by _____, and such costs shall not exceed _____.

5. ACCEPTANCE

Upon delivery and installation of the equipment at _____, Lessee shall test and inspect it, and if in good working order, accept the equipment and acknowledge the acceptance in writing. The date of acceptance shall be the date upon which Lessee acknowledges in writing that the equipment is installed and operating properly.

6. MAINTENANCE

Lessee shall use the equipment in a careful and proper manner in compliance with its intended use. Lessor shall at its expense maintain each item of equipment in good mechanical condition and working order. Lessee shall not be responsible for normal wear and tear resulting from the use thereof.

OR

Maintenance shall be as stated on the attached Exhibit C (To be provided by Offeror).

7. INSPECTION

Lessor shall have the right, upon reasonable prior notice to Lessee and during Lessee's normal working hours, to inspect the equipment and observe its use at the premises of Lessee.

8. TITLE

The equipment shall at all times remain the property of Lessor and Lessee shall have no right, title, or interest therein except as expressly set forth in this Agreement.

9. GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the State of South Carolina.

10. HOLD HARMLESS

Lessor shall indemnify and save Lessee harmless from any and all liability, damages, expenses, causes of action, suits, claims or judgments arising from injury to person or property resulting from delivery or transportation of equipment caused by the negligence of Lessor, his agents or servants, and Lessor shall at its own expense, defend any and all suits which may be brought against Lessee, either alone or in conjunction with others, upon any such liability or claim or claims.

11. JURISDICTION

Lessor acknowledges that it is subject to the jurisdiction and process of the State of South Carolina as to all matters and disputes arising pursuant to the Agreement and the performance thereof, including any questions as to liability for taxes, licenses, or fees levied by the State or its political subdivisions. Lessor agrees to execute any and all agreements necessary to accomplish this provision.

12. DEFAULT

Upon the failure of Lessee to make any payment when due, or upon the failure of Lessee to perform any other obligations imposed upon it by this Agreement and upon the continuance of such failure after the receipt of thirty (30) days written notice thereof from Lessor, Lessee shall be deemed to be in default and Lessor shall have the right to terminate this Agreement. Upon the failure of Lessor to perform any obligation imposed upon it by this Agreement, and upon the continuance of such failure after receipt of _____ days written notice thereof from Lessee, Lessor shall be deemed to be in default and Lessee shall have the right to terminate this Agreement.

13. TERMINATION

- (a) This Agreement may be terminated by Lessee's giving thirty (30) days prior written notice of such termination to Lessor. Lessee shall negotiate reasonable termination costs, if applicable.
- (b) Upon the termination of this Agreement as a result of a default by Lessor, Lessee shall be entitled to proceed by appropriate court action to enforce specific performance of this Agreement, to recover damages for breach, or to take such other action as may be permitted by law.

14. NON-APPROPRIATION CLAUSE

Notwithstanding any other provisions of this Agreement, the parties agree that the rental is payable by Lessee from appropriations, grants, and monies from the State Legislature and other governmental entities. In the event sufficient appropriation, grants, and monies are not made available to Lessee to pay this rent for any fiscal year, this Agreement shall terminate without further obligation of Lessee. In such event, the chief executive officer of Lessee shall certify to Lessor that sufficient funds have not been made available to Lessee to meet the obligations of this Agreement; and such certification shall be conclusive upon the parties.

15. **RENEWAL**

Lessee may, at its option by giving written notice to Lessor not less than thirty (30) days prior to the expiration of the initial term, renew this Agreement for an additional term of _____ upon the same terms and conditions as this Agreement, provided that the initial term and the renewal term cannot exceed a total of seven (7) years.

16. **NOTICES**

All notices and other communications made or required to be given under this Agreement shall be made in writing and mailed to the other party at its address as set forth herein or at such address as the party may provide from time to time.

Lessor's address: _____

Lessee's address: _____

17. **ASSIGNMENT**

Lessor may, with the prior approval of Lessee, assign its right to receive payment of rent hereunder, provided that such assignments shall not relieve Lessor of its responsibility to perform any duty imposed herein.

18. **RELOCATION**

In the event Lessee desires to relocate the equipment within its offices or elsewhere in South Carolina State Government, Lessor will submit a price quotation not to exceed Lessor's cost for the move or will prepare equipment to be moved by other mutually acceptable means.

19. **PATENTS INDEMNITY**

Lessor shall defend, at its own expense, any action brought against Lessee to the extent that it is based on a claim that the equipment supplies by lessor infringes a United States Patent, and Lessor will pay any costs and will indemnify Lessee for all expenses which are attributable to any such claim including any award of damages against Lessee, provided Lessee gives Lessor prompt notice in writing of such claim, and further provided Lessor shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise. Should the equipment become, or in Lessor's opinion be likely to become, the subject of a claim or infringement of a United States Patent, Lessee shall permit Lessor, at its option and expense, either to procure for Lessee the right to continue using the equipment, to replace or modify the same so that they become non-infringing, or to discontinue the use of the equipment and accept its return. Lessor shall have no liability to Lessee with respect to any claim of patent infringement which is based upon the combination of equipment supplied hereunder with equipment or devices not supplied by Lessor. The foregoing states the entire liability of Lessor with respect to infringement of patents by the equipment.

20. **PAYMENTS**

All payments due pursuant to this Agreement are solely the responsibility of the agency designated Lessee; the Office of General Services has no liability with respect to payments or breaches.

21. **ENTIRE AGREEMENT**

This Agreement, attached exhibits hereto, and the solicitation documents, if any, constitute the entire Agreement between the parties and shall not be amended, altered or changed except after prior written approval from the Office of General Services, in compliance with the S.C. Consolidated Procurement Code, and by written agreement, signed by the parties.

Accepted and executed the date stated above.

LESSOR:

BY: _____

ITS: _____

LESSEE:

BY: _____

ITS: _____

APPENDIX A**ON-SITE PRESENTATION AGENDA FORMAT**

Agenda Items: The Oral Presentation will be limited to a total of three (3) hours, and will consist of the following sections:

<u>TOPIC</u>	<u>Time Limit</u>
1. Introduction period	15 Min
2. Presentation of the script provided	2.5 Hrs
3. Closing Remarks	<u>15 Min</u>
TOTAL:	3 hours

APPENDIX B**Number of Precincts and Registered Voters by County as of November 2018**

County	Number of Precincts	Total Registered Voters	County	Number of Precincts	Total Registered Voters
ABBEVILLE	15	15,293	GREENWOOD	50	40,728
AIKEN	84	111,431	HAMPTON	18	12,632
ALLENDALE	8	5,837	HORRY	124	217,912
ANDERSON	80	118,055	JASPER	15	18,924
BAMBERG	13	9,375	KERSHAW	34	41,690
BARNWELL	15	13,445	LANCASTER	36	58,775
BEAUFORT	92	122,816	LAURENS	34	38,620
BERKELEY	88	124,954	LEE	22	11,632
CALHOUN	12	10,409	LEXINGTON	96	180,687
CHARLESTON	182	279,555	McCORMICK	11	7,064
CHEROKEE	29	31,992	MARION	17	21,004
CHESTER	21	20,128	MARLBORO	15	17,531
CHESTERFIELD	25	25,457	NEWBERRY	30	23,034
CLARENDON	25	22,748	OCONEE	31	49,887
COLLETON	32	24,235	ORANGEBURG	53	56,676
DARLINGTON	32	42,640	PICKENS	61	70,161
DILLON	20	18,658	RICHLAND	152	253,417
DORCHESTER	90	101,113	SALUDA	18	11,377
EDGEFIELD	12	16,697	SPARTANBURG	98	181,212
FAIRFIELD	23	15,445	SUMTER	58	67,821
FLORENCE	65	85,619	UNION	23	16,369
GEORGETOWN	36	43,140	WILLIAMSBURG	28	21,400
GREENVILLE	153	314,929	YORK	98	172,925

Total Registered Voters 3,165,449

APPENDIX C
Absentee Participation Totals for 11/6/2018 Statewide General Election

County	Total			
	Applications		Ballots	
	Issued	Returned Before Deadline	Issued	Returned Before Deadline
01-ABBEVILLE	1,598	1,523	1,520	1,498
02-AIKEN	10,152	9,331	9,302	9,022
03-ALLENDALE	1,634	1,563	1,560	1,420
04-ANDERSON	8,821	8,139	8,122	7,893
05-BAMBERG	1,021	966	966	926
06-BARNWELL	1,306	1,256	1,252	1,228
07-BEAUFORT	19,686	18,379	18,368	18,006
08-BERKELEY	12,363	10,992	10,980	10,628
09-CALHOUN	1,198	1,134	1,134	1,114
10-CHARLESTON	44,554	41,237	41,237	39,999
11-CHEROKEE	2,453	2,347	2,345	2,317
12-CHESTER	2,215	2,118	2,113	2,083
13-CHESTERFIELD	1,599	1,517	1,517	1,482
14-CLARENDON	3,674	3,548	3,544	3,449
15-COLLETON	3,349	3,209	3,206	3,131
16-DARLINGTON	5,006	4,825	4,825	4,728
17-DILLON	1,676	1,543	1,518	1,206
18-DORCHESTER	10,795	9,867	9,851	9,597
19-EDGEFIELD	2,027	1,909	1,909	1,852
20-FAIRFIELD	2,015	1,948	1,946	1,912
21-FLORENCE	10,861	9,982	9,949	9,752
22-GEORGETOWN	5,515	5,171	5,167	5,039
23-GREENVILLE	22,850	20,132	20,092	19,388
24-GREENWOOD	4,429	4,131	4,130	4,002
25-HAMPTON	1,951	1,715	1,712	1,575
26-HORRY	13,505	11,813	11,770	11,379
27-JASPER	2,049	1,954	1,952	1,912
28-KERSHAW	4,824	4,323	4,316	4,229
29-LANCASTER	6,469	6,028	6,015	5,759
30-LAURENS	2,571	2,410	2,410	2,348
31-LEE	1,126	1,098	1,098	1,084
32-LEXINGTON	16,430	13,695	13,677	13,211
33-MCCORMICK	1,428	1,395	1,394	1,362
34-MARION	2,270	2,137	2,128	2,029
35-MARLBORO	3,475	3,290	3,285	3,145
36-NEWBERRY	2,231	2,140	2,137	2,090
37-OCONEE	6,109	5,777	5,771	5,635
38-ORANGEBURG	6,679	6,193	6,176	5,909
39-PICKENS	4,336	3,920	3,899	3,727
40-RICHLAND	30,136	27,292	27,190	26,159
41-SALUDA	830	788	785	772
42-SPARTANBURG	15,186	14,009	13,975	13,574
43-SUMTER	8,589	8,072	8,045	7,813
44-UNION	1,161	1,107	1,107	1,087
45-WILLIAMSBURG	2,273	2,159	2,158	2,121
46-YORK	13,835	12,311	12,267	11,777
Total	328,260	300,393	299,820	290,369

APPENDIX C-1
Absentee Participation Totals for 11/08/2016 Statewide General Election

County	Total			
	Applications		Ballots	
	Issued	Returned Before Deadline	Issued	Returned Before Deadline
01-ABBEVILLE	2,902	2,783	2,770	2,712
02-AIKEN	18,452	17,364	17,361	16,986
03-ALLENDALE	1,494	1,436	1,435	1,419
04-ANDERSON	15,786	14,673	14,672	14,324
05-BAMBERG	1,658	1,543	1,539	1,505
06-BARNWELL	2,117	2,026	2,019	1,979
07-BEAUFORT	24,636	22,873	22,825	22,149
08-BERKELEY	18,345	16,637	16,634	16,021
09-CALHOUN	1,900	1,827	1,825	1,782
10-CHARLESTON	66,024	61,560	61,558	59,955
11-CHEROKEE	4,446	4,308	4,305	4,262
12-CHESTER	4,590	4,464	4,462	4,397
13-CHESTERFIELD	3,200	3,067	3,066	3,012
14-CLARENDON	6,415	6,229	6,218	6,099
15-COLLETON	5,689	5,508	5,502	5,409
16-DARLINGTON	7,918	7,657	7,647	7,484
17-DILLON	2,293	2,140	2,128	1,937
18-DORCHESTER	17,254	15,680	15,644	15,259
19-EDGEFIELD	3,185	3,069	3,068	2,985
20-FAIRFIELD	3,186	3,073	3,072	3,024
21-FLORENCE	18,939	16,793	16,775	16,464
22-GEORGETOWN	10,025	9,556	9,525	9,270
23-GREENVILLE	35,426	31,607	31,564	30,495
24-GREENWOOD	7,547	7,093	7,092	6,931
25-HAMPTON	2,657	2,525	2,525	2,443
26-HORRY	22,978	20,188	20,137	19,444
27-JASPER	3,081	2,928	2,928	2,838
28-KERSHAW	7,969	7,359	7,333	7,175
29-LANCASTER	11,233	10,694	10,679	10,450
30-LAURENS	4,806	4,572	4,566	4,424
31-LEE	2,029	1,957	1,956	1,889
32-LEXINGTON	30,558	27,571	27,532	26,811
33-MCCORMICK	2,210	2,157	2,155	2,117
34-MARION	4,096	3,790	3,773	3,565
35-MARLBORO	5,198	4,894	4,889	4,543
36-NEWBERRY	3,831	3,687	3,667	3,589
37-OCONEE	9,865	9,481	9,474	9,305
38-ORANGEBURG	11,744	11,323	11,289	11,029
39-PICKENS	8,258	7,558	7,533	7,276
40-RICHLAND	61,014	57,056	56,880	55,290
41-SALUDA	1,357	1,296	1,290	1,266
42-SPARTANBURG	30,517	28,799	28,763	28,180
43-SUMTER	15,863	14,405	14,013	13,496
44-UNION	2,143	2,062	2,060	2,029
45-WILLIAMSBURG	3,428	3,282	3,277	3,199
46-YORK	30,528	28,729	28,713	27,983
Total	558,790	519,279	518,138	504,201

APPENDIX D
Business Proposal

Section 1: Total Fixed VSS Purchase Price (Complete turn-key solution)

- Attach spreadsheet(s) detailing amounts used in this section separately for the SEC and each county when applicable

	Amount
Hardware	\$
Software	\$
Implementation	\$
Other	\$

* Grand Total	\$
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Note 1:
Grand Total represents the complete cost to fully implement a turn-key VSS.

Section 2: Hardware And Software Maintenance for the SEC and each county

- Attach spreadsheet(s) detailing amounts used in this section separately for the SEC and each county when applicable

	FY19-20	FY20-21	FY21-22	FY22-23	FY23-24	FY24-25	FY25-26	Amount
Maintenance								\$
Software/Licensing								\$

* Grand Total	\$
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Note 2:

- * References the cost used for evaluation

APPENDIX D
Business Proposal

Section 3: Ballots and Consumables

- Attach spreadsheet(s) detailing amounts used in this section separately for the SEC and each county when applicable

	FY19-20	FY20-21	FY21-22	FY22-23	FY23-24	FY24-25	FY25-26	Amount
Statewide Elections	4	1	2	1	4	1	2	
Ballots								\$
Consumables								\$
Other								\$
					* Grand Total		\$	

Section 4: Electronic Poll Books

- Attach spreadsheet(s) detailing amounts used in this section separately for the SEC and each county when applicable

	FY19-20	FY20-21	FY21-22	FY22-23	FY23-24	FY24-25	FY25-26	Amount
Hardware								\$
Software								\$
Implementation								\$
Maintenance								\$
Software/Licensing								\$
Other								\$
					Total		\$	